Supreme Court, U.S.
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Docket No.. _____

IN THE SUPREME COURT OF THE UNITED STATES

TERM: OCTOBER 1997

IRA GANGOPADHYAY (Ms. Gango)
PETITIONER

v.

NIRMAL K. GANGOPADHYAY
OPPONENT

FROM THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
PETITION NO.970317

(Civil Action No. 87-D-1764 From the Circuit Court of Raleigh County, West Virginia)

"PETITION FOR WRIT OF CERTIORARI"

Submitted by:
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75 pp

(1) Does the "Due Process" in Constitutional Law allow any of the Court Authorities - Law Masters; Circuit Judges; and the State Justices to ignore the documented evidence of fraud, concealment, and lies under oath in the Court Records of the Male Defendant, to favor him in this Civil Litigation, because Defendant is employed as Chief Engineer and Executive Vice President of a major Coal Company in Southern West Virginia? (See Argument VII (1)).

(2) Does the "Due Process" clause of Constitution permit each of these Court Authorities to be totally blind or blatantly negligent to the meaning of fairness and equality in their Judicial Discretion that they can "Rubber Stamp" the wrongful decisions again and again, in a Litigation Process that has lasted 11 years? (See Argument VII (2)).

(3) Does the "Due Process" of the Constitution allow Sanction for each of these Court Authorities to Discrminate in how and when they implement the State Law regarding Child Support calculation and "Pro Tanto" child support reduction to benefit the Defendant, thereby not rendering justice and prompt remedial measures for the ordinary, female petitioner/litigants - the disadvanged party? (See Argument VII (3)).

(4) Does the Judicial Privilege in the Constitution grant an overzealous Law Master (who is aspiring to be a Judge in the midst of this litigation), the Authority to deny "Due Process" to the Petitioner in his Court, and hold a Child Support Reduction hearing on his own initiative, without a Motion or Petition being filed by the Defendant, and without notice being served to the Petitioner or her Counsel of Record? (See Argument VII (4)).

(5) Does the Constitution permit a Disbarred Law Master's intervention into a continuing case, that he has previously heard and made an unfavorable decision against the Female Petitioner, after his disbarment and resignation as Law Master ? And does the Law allow the new Law Master to request the Disbarred Master to write an unofficial hand written opinion, then arrange to lodge this document into the Court file without the knowledge of the Petitioner and her counsel? (See Argument VII (5)).

AUTHORITIES

STATUTES

W.Va. CODE 48-2-16(b).

W.Va. CODE 48-2-33.

CONSTITUTIONAL LAW

16A Am. Jur. 2d CONSTITUTIONAL LAW; pp. 921-985; 1979

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PETITION FOR WRIT OF CERTIORARI :

TO THE HONORABLE JUSTICES OF THE
SUPREME COURT OF THE UNITED STATES:

Petitioner, Ira Gangopadhyay (Ms. Gango), appearing in her own proper person, Writ of Certiorari, pursuant to Supreme Court Rule 10, Rules of Supreme Court of the United States. This Petition of Certiorari is from the West Virginia Supreme Court of Appeals, who has refused the said Petition for Appeal on the 19th Day of November, 1997, (Chief Justice Workman not participating). The above Petition for Appeal arose from the Final Order of the Circuit Court of Raleigh County, West Virginia, Special Judge Frank E. Jolliffe presiding, entered December 18, 1996.

I. THE KIND OF PROCEEDING AND NATURE OF THE RULING BELOW:

This Writ of Certiorari presented for review by the Honorable Justices of the Supreme Court of the United States, concerns the decision of the Circuit Court of Raleigh County, West Virginia, on remand from the West Virginia Supreme Court of Appeals to determine the validity of an oral separation agreement. The Circuit Court was directed in February 1991, to ascertain whether the parties understood its terms and have voluntarily agreed to them without any coercion; and whether the terms of the oral separation agreement were fair and equitable to both sides.

In this Civil Action Case, litigation was initiated in July 1987, and involved almost 11 years of legal wrangling involving Divorce; Child Custody; Disclosure of Wages and Valuation of Marital Domicile; Marital Property Distribution; one Disbarred Law Master's unlawful involvement in the case behind the Plaintiff's Counsel and Plaintiff ; Another replacing Law Master's Unlawful request to the Disbarred Law Master to write an opinion and lodge in the Court file without the plaintiff and her Counsels's knowledge; while these parties were issued an Order to appear for a new Hearing in the above Law Master's Court; then the same Law Master holds a Court Proceedings to conduct a hearing to reduce the Child-support payments to the Plaintiff without any Notice being served to the Plaintiff or her Counsel of record; one Circuit Judge recusing himself from this case; another Special Judge appointed to review and hear the case - unwilling to review the case properly - left the entire two boxes of Court documents in a previously recused and retired Judge's chamber in Raleigh County; while writing his

Opinion and Orders from his Circuit Court in Greenbrier County - about 60 miles distance from the documents for review; then the same Judge over-rules his own ruling after two and half (2 ½) years Order for "holding in abeyance" and staying further determination and collection of child support arrearages by the Petitioner; because Special Judge chose to "Rubber Stamp" the Law Master's unlawful child support reduction order, instead of making an honest review of the records by himself.

Following more than two dozens Court Hearings and Court Appearances; after $30,000.00 + litigation expenses; almost 70 pounds worth of Court documents, comprising of Court Transcripts; Petitions; Revised Petitions; Answer to Petitions; Motions and Counter Motions; Appeal; Brief and Response Brief etc. etc.; the entire legal battle became a "RUBBER STAMP" function of the West Virginia Judicial System - starting from the disbarred Law Master Sayre to Judge Canterbury; to Law Master Sayre and Master Lazenby on Remand; then to Judge Canterbury; to Special Judge Jolliffe; and finally to four (4) West Virginia Supreme Court Justices (Chief Justice Workman not participating).

The West Virginia Supreme Court's decision to refuse to hear this case constitutes a Miscarriage of Justice, resulting in substantial inequities and irreparable harm to the petitioner. In 1991, part of the charge of the West Virginia Supreme Court on remand to the Circuit Court of Raleigh County, in determining the validity of an oral separation agreement was to ascertain whether the parties understood its terms, voluntarily agreed to the same without any coercion, and whether the terms of the oral separation agreement are fair and equitable. The above Court's refusal to hear the Petitioner's Appeal of February 14, 1997; rendered meaningless the charges to the Circuit Court, considering the full exposure of the gross inequities in the marital property distribution; the lack of candid disclosures of the Defendant's financial status; misrepresentation of the Defendant's income to the Court under Oath and in his Sworn Testimony in the Court Hearings on remand; misrepresentation as to income earned and income applied to the Child Support Formula, resulting in miscalculation of the actual child support payments to the Petitioner; and the Denial of the Petitioner to free access of the Courts when her ability to pursue child support arrearages were suspended by the Circuit Court's Order "holding in abeyance" and staying further determination and collection of child support arrearages from may 20, 1994 through December 18, 1996, thereby forcing the Petitioner and her children to live in penurious condition from 1989 to present.

Further, the Petitioner is in jeopardy of losing the marital home, as a result of the so called "agreement's" buy-out provisions, while a child in her custody, still under the age of 18 years resides with her, as a result of the Circuit Court's acceptance of a valuation of the marital home, clearly agreed by the parties from uncontroverted evidence, on remand from this Court, to have been Twenty-Five thousand Dollars ($25,000.00) less than the stated by the parties at the time of the so-called "original" oral agreement was made, and which resulted in Petitioner's Waiver of Alimony. This and the gross, gross inequity in the division of marital property pursuant to the so called "oral agreement:" is clearly wrong and an ABUSE OF DISCRETION by the Circuit Court and now SANCTIONED by the West Virginia Supreme Court of Appeals.

BRIEF HISTORY OF THE CASE

II. IN THE FAMILY LAW MASTER AND CIRCUIT COURT OF RALEIGH COUNTY:

The parties were born and reared in India, and were married in Covington, Virginia on December 15, 1971. Two daughters were born of the marriage. At the time of the Final Hearing, the parties' two infant daughters were ages 9 and 6. Petitioner is a Social Worker with the State of West Virginia, and the Defendant is employed as Chief Engineer and Executive Vice President of a large Coal Corporation in Southern West Virginia Individually owned and operated by Tracy Hylton and family.

Wife filed a complaint for divorce in the Circuit Court of Raleigh County, West Virginia, on July 28, 1987, and charged that the defendant was guilty of acts of cruel and inhuman treatment and also alleged, as grounds for divorce that irreconcilable differences have arisen subsequent to the marriage. Among other things, Wife prayed for Alimony and Support; Custody of the two infant children; Child support and an Equitable distribution of all Marital Assets, real and personal. A Temporary Hearing was held on August 25, 1987, and Wife testified about verbal and physical abuse and other acts of cruelty exhibited towards her by the Defendant; Wife also testified at such hearing that when she became pregnant with the first child in 1978, she terminated her permanent job with the State of West Virginia to stay home to take care of the children and as homemaker, as dictated by the husband, following the cultural tradition.

A Contested Final Hearing was scheduled for July 12, 1988 at 9.30

am:. Witness Subpoenas were issued to the Petitioner's Co-worker and best friend - Ms. Bobby Miller; Ms. Catherine Cox; the babysitter and other witnesses. In all respects, the hearing was scheduled to be contested, and Law Master Truman Sayre had set aside two full days for such contested hearing on July 12 and 13, 1988. All evidence indicate that no agreement of settlement had been reached between the parties prior to the day of the Hearings, but the parties and counsel met immediately before the hearing on the Courthouse-steps, and thereafter advised the Family Law Master Truman Sayre that a complete settlement of all issues had been reached. Both attorneys focused their attention on the Petitioner and questioned her about the joint custody of the minor children, child support, waiver of alimony (after 17 years marriage), and distribution of marital assets etc.. During such process, the Defendant began banging on the table and challenging the Plaintiff to a poker game; Law Master and both Counsels looking amused; then the Defendant and his counsel narrating about the property distribution after the death of two girls etc.etc. The Petitioner - coming from a Cultural Background of subservient Role of Women - specially in front of Men; intimidated by such Court Proceedings - where both attorneys firing questions at her; was feeling very nervous, awkward and intimidated in front of four men in the courtroom, and answered "Yes" to every question, although she was not agreeing with these men and not knowledgeable about some technical legal terms and terminology and consequences of such interrogatives fired at her. However, both counsels recited on the record the parties' oral agreement concerning all of the above issues, without any type of written agreement document for the petitioner to review, contemplate and answer with studied and informed consent.

Ten days later, on July 22, 1988, Petitioner's Counsel advised the Family Law Master that Mrs. Gangopadhyay had withdrawn his authority to endorse the proposed Final Order tendered to him by the Respondent's Counsel. Thereafter, in September 1988, Petitioner's Counsel filed a Motion seeking to have the oral property settlement announcement set aside on grounds as follows: (I) that her consent was not knowingly and intelligently given; (ii) that she had been pressured into making the settlement agreement; and (iii) that the Defendant had misled her as to the value of the marital residence.

At a hearing conducted before Family Law Master Sayre on November 28, 1988, the Wife's counsel indicated that his client was under duress at the time of the Final Hearing; that she was intimidated by the process; and that because of her cultural background, she remained silent

about her objections in the Court; and she was unable to communicate with her lawyer the day before the Final Hearing because Husband had caused Wife's telephone to be disconnected on that day. During this hearing, Wife's counsel cited the then-recent case Lowe v. Lowe, 370 S.E. 2d 731 WV (1988), which precludes a proper award of joint child custody without the submission to the Court of a joint parenting agreement. Counsel for Wife further stated that the equitable distribution of the marital residence was based upon erroneous information in that although Husband had indicated in his own written disclosure filed with the Court that the value of the homeplace was $115,000.00, she thereafter had the home appraised, and the market value at the time of the Final Hearing was actually only $90,000.00.

Family Law Master Sayre made recommendation to the Court that joint custody be denied, but that the remainder of the matters stated on the record at said Final Hearing be confirmed by the Court. However, that the terms and provisions of the proposed Agreement relating to Custody and Extensive Visitation Rights of the Defendant remained in place, virtually unchanged. Master Sayre concluded that because of the parties orally spread their agreement on the record at the Hearing of July 12, 1988, and approved it under oath, the oral agreement was the equivalent of a writing. The Master's Recommended decision was approved and implemented by Circuit Judge Canterbury.

Thereafter, the Wife filed a Petition for Review with Circuit Judge Canterbury regarding the marital domicile valuation issue; the Waiver of Alimony; the Defendant's Incomplete Disclosure of Assets and Liabilities Statement; the Family Law Master erred by elevating a proposed oral agreement to the status of an executed Separation Agreement; there was no inquiry as to whether the proposed oral agreement was fair and reasonable, and not obtained by fraud and duress; and that the proposed Order as tendered would create a gross injustice and a completely inequitable distribution of marital assets for the Petitioner. Circuit Judge Canterbury summarily affirmed the ruling of the Family Law Master in all respects - "Rubber Stamped" the decision.

A Final Order was entered, over the objection of Wife, on September 15, 1989. The Final Order dissolved the marriage between the parties; awarded custody of the two infant daughters to wife; awarded child support in the amount of $1,000.00 per month, provided for hospitalization coverage by both parents; set forth very extensive visitation schedule for Husband; contained a standard automatic withholding clause; and incorporated a

Property Settlement Agreement prepared by the Defendant and co-signed by his attorney and unsigned by the Petitioner and her Counsel. The so-called original property Settlement Agreement specifies that Wife is obligated to pay $20,000.00 to Husband within ninety days; Wife's obligation to make the regular mortgage payments of $495.85 a month; and the Husband's right to offset the mortgage money from child support payment; in case Wife fails to pay the monthly mortgage payment. Additionally, pursuant to the extensive visitation privilege afforded to Husband, he is granted two three-week periods of time during the summer and husband is allowed the "Pro Tanto" child support reduction while children are visiting with him.

III. IN THE WEST VIRGINIA SUPREME COURT OF APPEALS IN 1990:

The Wife's replacement attorney - Honorable H.L.Kirkpatrick, filed a Petition for Appeal with West Virginia Supreme Court of Appeals on March 12, 1990. This Petition asserted following assignment of error:
(1) That the Court erred by elevating a proposed oral agreement elicited at the Final Hearing to the status of an Executed Separation Agreement as required by West Virginia Code 48-2-16.
(2) That the Court erred by making no inquiry as to whether the proposed oral agreement was fair and reasonable, and not obtained by fraud, duress or other unconscionable conduct.

The Petitioner's counsel argued that Statutory provision contemplate a written separation agreement executed by the parties, and when such agreement is submitted to the Court for incorporation into a judicial order and a problem arises in this regard, it is incumbent upon the Court to make a specific determination as to (a) whether or not the agreement is fair and reasonable, and (b) whether or not it was obtained by fraud, duress or other unconscionable conduct. Pursuant to W.V.Code 48-2-16, if there is no written separation agreement presented to the Court, the Court is required to determine all issues between parties. It was apparent from the review of this proposed agreement that it was grossly inequitable and unfair to the Petitioner. Furthermore her consent to the proposal was obtained by way of duress and intimidation. The petitioner's Counsel discussed each of the following items as to how they affected the inequitable distribution of marital assets - the disadvantaged party - the Wife receiving a negligible amount compared to the Husband - a 16 years tenured Chief Engineer with a major coal company in Southern West Virginia, with substantial earnings, retirement, deferred income and other fringe benefits (like personal favors to

make alliance with strategic individuals in the State of West Virginia for Personal favors). Following issues were argued upon by the Counsel in the Appeal of 1990:

A. ALIMONY: The wife of seventeen years, and during which time she was a homemaker for most of the time, waived any right or entitlement that she may have to alimony and support payable to her by husband, although there was a great disparity in the respective income of both parties - Wife's $20,000.00 fixed annual salary vs. Husband's $75,000.00 + annual salary (estimated), in addition to his private engineering consultation and other investment income (not disclosed to the Court); that the petitioner bargained away her right to alimony upon consideration on the representation that she would receive $19,000.00 lump sum alimony payment by way of excess equity in the homeplace, because it was believed at the Final Hearing that the Fair market value of the marital residence was $115,000.00, with a mortgage owed of approximately $37,000.00, leaving a purported equity of $78,000.00. Accordingly, each party would have a value of $39,000.00 equity in the house. Under the agreement presented, Wife was to pay Husband $20,000.00 lump sum in lieu of alimony. However, immediately subsequent to the Final Hearing, Wife had the homeplace appraised, and appraised value of the house was $90,000.00. The equity in the marital domicile for each party, therefore, was $26,500.00, and wife was obligated to pay $20,000.00 to the Husband to retain the ownership of the homeplace, thus she is receiving $6,500.00 for her seventeen years marriage to the Defendant, and most of that time she had to stay home to take care of the children and be a homemaker.

B. JOINT CUSTODY AND MARITAL DOMICILE: Ordinarily, the primary caretaker (in this instance the Petitioner) would be awarded the sole custody, care and control of the children. However, the Petitioner under duress during the Final Hearing of July 12, 1988, "agreed" to Joint Custody arrangement for her two infant daughters. However, this part of the settlement was subsequently pronounced invalid by the Master and the Court due to non-compliance with Lowe v. Lowe, 370 S.E. 2d 731 (1988). Most commonly the primary caretaker and custodian of the infant children would be awarded the exclusive use and occupancy of the marital domicile outright for the maintenance of a home for such children as an incident to requiring the payment of alimony or child support. However, in this case, the settlement proposal enforced by the Court, required the Wife to pay to Husband a lump sum of $20,000.00 within ninety (90) days, as payment for Husband's interest in the marital residence, that calculation was based upon a largely

inflated valuation of the home. Further, Wife was directed to make all mortgage payments incurred in connection with said residence.

C. DISCLOSURE OF ASSETS: West Virginia Code 48-2-33 requires each party to furnish full disclosure of all assets owned in full or in part by either party, separately or jointly. This Code provision further provides that the Court may on its "own initiative" and "shall at the request of either party", require the parties to furnish copies of all State and Federal income tax returns filed for the last two years. Petitioner's original trial counsel failed to request copies of those tax returns, (inspite of the Petitioner's repeated request to do so) until after the Final Hearing, and the Court did not require on its own the Defendant to furnish those important documents as required by Law. The Petitioner, therefore, asserted in her Appeal to the West Virginia Supreme Court that no fair and meaningful property settlement may be achieved unless there is full disclosure of income, which can be best defined and supported by the furnishing of income tax returns. Additionally, the exact knowledge of that income is necessary for the purpose of calculation of child support pursuant to the applicable Child Support Formula.

D. CHILD SUPPORT: With the advent of the "Melson Formula", the determination of Child support standard is more or less a cut and dried item, involving the factoring into the formula of the parties respective incomes, allowing all permissible offsets, and arriving at a Court Ordered amount. However, in this case the exact income of the Defendant was never disclosed. (Even today Defendant's Exact Income is Unknown). The Child support amount, therefore, could not have been calculated accurately because of factors described above.

E. "PRO TANTO" REDUCTION OF CHILD SUPPORT DURING VISITATION:

The unsigned written agreement incorporated by reference into Decree, specifies that the Child Support required to be paid by Husband to wife shall be reduced "pro tanto" during the two three-week summer vacation periods when the Husband shall have physical possession of said children. It is significant to note, that there was no mention whatsoever of such "pro tanto" reduction of support at the Final Hearing, at which time parties supposedly agreed to the terms of this divorce and child custody. The Circuit Court allowed such Unlawful Child Support reduction by the Defendant, and "holding in abeyance" all arrearages, from July 1988 thru December 1996,

(Even today the defendant owes the Petitioner in excess of $30,000.00+ child support arrearages and interests). It was entirely up to the Defendant's Will and Pleasure as to when and how much money he paid to the petitioner, because all of the above Court Authorities sanctioned such improper activities.

Judge Canterbury's Order of February 20, 1990, mandated that Wife shall pay almost $500.00 a month for the mortgage payment for the marital residence for the children, thereby obligating her to pay for the utilities and other living expenses from the reduced child support. On the other hand, the Circuit Judge did not require the Child Advocate Office's involvement to make the Defendant comply with his own Court Order, despite this Defendant's previous history of voluntary child support reduction at his own will and pleasure. Furthermore, this child support mechanism, skewed the calculation of the Child Support Formula, as the Formula is not structured to account for the allowance of reduction of forty two days out of the year for non-payment of support. Although such unlawful provision was atypical, and not mentioned during the Final Hearing, not agreed upon by the parties, the Circuit Judge Canterbury was insistent to enforce such an Order - simply to "Rubber Stamp" the Master Sayre's recommended Order - thereby benefitting the high salaried (approx. $75,000.00 per year) Defendant, employed by the Powerful Coal Operator in Southern West Virginia. Additionally, Wife paid the mortgage on the marital residence, and Defendant claimed the mortgage interest in his income tax returns.

F. CHILDREN'S CUSTODIAL ACCOUNTS: Pursuant to the unsigned agreement incorporated into the Decree, Wife is made the Joint Custodian of certain custodial accounts, being held for and on behalf of the infant children. Husband is designated the controlling money-manager of those accounts; however, there has never been any disclosure as to the whereabout and contents of such accounts after year 1984. As joint custodian, Wife should be privy to all pertinent information pertaining to those accounts, for tax purposes and otherwise; however, the Final Decree does not provide that she be allowed access to such information. If Wife is to be a Joint Custodian of these accounts, ordinarily one would expect some safeguard to be provided to prevent manipulation of the accounts by one party, i.e., transfer of monies overseas to support extended family of the Husband; etc.etc..

IV. CHIEF JUSTICE MILLER'S OPINION OF FEBRUARY 13, 1991:

Following the Petitioner's Appeal in March 1990; the respondent's Brief and Counter Brief of the Petitioner's counsel, the argument before the Court, then Chief Justice Miller concluded,

"In the present case, we do not find from the record that the Master before whom the separation agreement was dictated made a sufficient independent inquiry to determine whether the parties understood the agreement or whether it was voluntary and free from coercion. The plaintiff alleges that her husband intimidated her into agreeing to the settelement, just prior to the hearing. She also asserts that due to cultural differences in her upbringing, she was unfamiliar with the legal process and unable to express her dissatisfaction with the agreement or to communicate with her attorney. Unfortunately, the master made no factual inquiry into these allegations and took no testimony. In these circumstances, we cannot say that the inquiry conducted by counsel for the parties, soliciting merely conclusory responses, was sufficient to satisfy the requirements set out above.

"The Circuit Court did make a finding that the settlement was fair and equitable. There does not appear; however, to have been inquiry into the parties' financial background. Indeed, there appears to have been no inquiry into this area by either the master or the circuit court.

"For these reasons, the judgement of the Circuit Court of Raleigh County is reversed, and the case is remanded for a further hearing with regard to the validity of the separation agreement."
(INDEX No.19; pp.11-12 with Appeal - 2/14/97).

V. EVIDENTIARY HEARINGS UPON REMAND AND FACTUAL DISCOVERIES:

Following the instructions from the west Virginia Supreme Court of Appeals in 1991, Master Sayre held a series of hearings in Year 1992 - on January 20, February 12, April 10; Master Sayre was Disbarred in May 1992; thereafter Mr. Lazenby was appointed as Law Master to replace Mr. Sayre and he held a hearing on December 1, 1992, and following evidence was revealed:

A. PETITIONER WAS UNDER DURESS AT THE TIME OF ORAL SEPARATION AGREEMENT ON JULY 12, 1988:

The Petitioner's and her friend - co-worker Bobbie Miller's testimony clearly indicated that the Petitioner was under duress and distraught on July 11, 1988, the day before the scheduled contested hearing when oral separation agreement was announced on July 12, 1988. The Petitioner was

out on the road until midnight with two infant children in tow to contact her attorney, because Defendant had caused her telephone to be disconnected that evening. When the Petitioner was able to contact her attorney, an argument ensued and the original trial counsel threatened to withdraw from representing her the next morning in the contested hearing. In addition to the intimidating scenario of Family Law Master's Court Hearing on July 12, 1988 (described in Item II), there is substantial and significant testimony of Carl Roop, associate counsel with the Petitioner's original Counsel, who testified before Master Lazenby on 12/1/1992, that he assisted the Petitioner in preparation for the contested hearing on the morning of the hearing - July 12, 1988, and he also witnessed an argument between the Petitioner and her Divorce Counsel immediately after the hearing at which time Petitioner was upset and distraught.

B. DEFENDANT'S INITIAL FINANCIAL DISCLOSURE TO THE COURT ON JULY 12, 1988 AND HIS EMPLOYER'S WAGE/SALARY STATEMENTS SUBMITTED TO THE COURT ON JUNE 14, 1995 SHOWS A DIFFERENCE OF $15,00.00+ DIFFERENCE IN ANNUAL SALARY:

The Defendant's sworn testimony to the Court, under oath, clearly demonstrated that he did not provide honest and truthful disclosure of his income or assets to the Court at the time of so-called "Separation Agreement", On July 12, 1988, as required by Law. It was also evident through several Hearings on Remand - 2/12/92; 4/10/92; 12/1/92 and the Petitioner's Counsel's cross-examination, that several substantial questions as to the defendant's income, investments transfer and/or liquidation of investments were not disclosed; he filed inaccurate and insufficient financial disclosures, he lied under oath because the "Attachment -3"- the Employer's Wage/salary statement, submitted to Court on June 14 1995, clearly exhibits a difference of $15,000.00+ difference in Defendant's Annual Salary, than what he reported to the Court at the time of "oral separation agreement".

C. DEFENDANT'S VERSION OF THE MARITAL ASSETS DISTRIBUTION AT THE TIME OF SEPARATION AGREEMENT LACKS THE SUPPORTING EVIDENTIARY DOCUMENTS TO VERIFY HIS EXAGGERATED FIGURES:

The Defendant prepared a phony document of "Marital Assets Distribution at the time of Separation"(7/12/1988) and submitted to the

Court on April 10, 1992. The defendant submitted the over-inflated price (almost 250 - 300% above the purchase price) for 11 year old household furnishings bought from local discount wholesale stores that Plaintiff received; and the Plaintiff's personal jewelries and stamp collection etc. that she inherited or received as gifts from her family or spouse; without a single piece of evidentiary receipts from stores or professional appraisal of the Certified jeweler etc. to verify his claim of exaggerated price. On the other hand, the defendant minimized the value (200-250%)e of his own personal and many valuable marital items that he removed from the house during litigation process, (or did not disclose them in his list to the Court) such as Video camera and equipment; his Rolex Watch; Wife's Omega watch; children's gold jewelries; 20- 1oz. gold Krugerrand coins; Carved Ivory table lamp; many Ivory inlaid cigar boxes; sandlewood carved figurines; Hand Woven 9' x 12' Silk Carpet bought from India; wife's sowing machine etc. etc.. Incredibly, Court authorities never asked the Defendant to verify his price tags through the purchase receipts or professional appraisals; and accepted such phony marital assets distribution document.

VI. THE WEST VIRGINIA'S JUDICIAL AUTHORITIES' INDISCRETION AND ABUSE OF POWER AND MISTREATMENT OF THE PETITIONER IN THE COURT:

To the total disbelief and complete amazement of the Petitioner and her counsel (including Honorable H.L.Kirkpatrick), everyone of these Court Authorities - Disbarred Master Sayre; Judge Canterbury; Master Lazenby; Special Judge Jolliffe; and four Judiciary members of the West Virginia Supreme Court of Appeals (Chief Justice Workman not participating); chose to ignore such lies, concealment and outright fraud in the Defendant's Court Records and Sworn Testimony to the Court; Or may be they decided NOT TO HEAR and READ/COMPREHEND ANY TESTIMONY AND RECORDS at all; Or each of these Court Authorities might have some axe to grind and more hays to gather by establishing alliance with the Defendant's party through open favoritism towards him and abusing their Judicial Discretion. The West Virginian Court Authorities willingly and repeatedly violated the fundamental rights of fairness, equality and proper justice to the Petitioner by depriving her the "Due Process" in the Court and denying her the "equal protection of the laws" within its jurisdiction. (The specifics about the improper Court proceedings; Denial of "Due Process"; and behind the door manipulation by the Court Authorities are described in item VII. (1) thru (5) in Argument of this case).

The West Virginian Court Authorities' repeated Inaction, or Discriminant Implementation of the State Law are clear evidence of the Judicial Tyrrany against the Single, Divorced, Working Mothers in West Virginia. The Petitioner has always believed that every citizen of this great Nation is entitled to equal treatment under the Constitutional Laws of this Country. The Petitioner carried on with her legal battle for 11 years with the firm belief that although she cannot claim a big salaried job; lucrative employment benefits like alliance with Political and Judicial entities in the State of West Virginia through powerful Employer; possible campaign contribution towards the chosen Court Authorities etc.etc; yet she has the equal rights under the "Due Process" of the Law of this Country, just like her opponent. However, with the Refusal of her Petition for Appeal, Petitioner's belief is completely shaken off, and she is convinced that she cannot expect equal treatment under the West Virginia Law and Judicial Discretion of these Court Authorities.

All through these legal turmoil, the petitioner has been conferring with many, many of her friends, colleagues, aquaintances and neighbors all over the State of West Virginia, the Petitioner has discovered that this kind of Judicial Indiscretion and Abuse is rampant in the State of West Virginia. It has become a common practice for the Court Authorities in this State to bend backward for those litigants who are well connected; or they have some powerful alliance in the community; or such citizen might create a big headline in the newspaper. The ordinary people like the Petitioner do not have any remedies under the present West Virginia Judicial System, because we cannot survive the Judicial Tyrrany due to our limited financial resources, enormous burden to be a single, divorced, working mother to support the family and fight the battle of Monsterous Legal System v. Lone Ranger Female Litigant, in addition to the opponent's greed and malice inflicted upon us.

VII. CONSTITUTIONAL AMENDMENT XIV AND PETITIONER'S INDIVIDUAL RIGHTS ARGUMENT

The Petitioner asserts grounds under the "Due Process" clause of Ammendment XIV of the Constitution of the United States of America, and raises following Questions for the Honorable Justices of the Supreme Court of the United States:

(1) DOES THE LAW ALLOW ANY COURT AUTHORITIES - LAW MASTERS; CIRCUIT JUDGES; AND THE STATE JUSTICES TO IGNORE THE DOCUMENTED EVIDENCE OF FRAUD, CONCEALMENT, AND LIES UNDER OATH TO BENEFIT THE ADVANTAGED PARTY - THE DEFENDANT IN THE CIVIL LITIGATION ?

The Nature and Scope of Guaranty of Due Process is described as; "The guaranty of due process of law is one of the most important to be found in the Federal Constitution or any of the amendments, ...Due process of law is the primary and indispensable foundation of individual freedoms; ..... A state's obligation under the Fourteenth Amendment are not simply generalized ones; rather, the state owes to each individual that process which, in light of the value of a free society can be characterized as due. ..... And the guaranty of due process adds nothing to the right of one citizen as against another.
(16A Am. Jur. 2d, "Constitutional Law", pp.955-957).

The Petitioner has been denied the equal protection of the Law, and guaranty of Due Process, because every one of the Court Authorities from bottom layer - Law Master to the top layer of the West Virginia Justice System - Honorable members of the West Virginia Judiciaries, have disregarded the concealment and fraud in Male Defendant's wage/salary evidentiary information to the Court and to the Petitioner and her Counsel at the time of separation Agreement, when the purported agreement was struck.

The Defendant has declared in his sworn Court Affidavits "Disclosures of Assets and Liabilities", that was tendered to the Court by his Counsel on July 12, 1988- the time of separation agreement, that his annual income was $60,000.00, almost $15,000.00 + less than what he was earning from his employer at that time and in previous years. All through the Court proceedings on remand; Hearings held in Raleigh County on January, February, April and December 1992, the Defendant has portrayed to the Court that his annual wage/salary has gone down from $74,000.00+ in 1984 and 1985 to $60,000.00 in 1986 and 1987 - the years Defendant chose to submit his income tax to the Court. In above proceedings, the Defendant also testified that he receives $2,307.00 in wages from his employer every two weeks. Upon Plaintiff's counsel's (Honor. Kirkpatrick) cross examination, the Defendant repeatedly testified under Oath that his salary has gone down, that his wages are tied to the profit in the coal business of the company (though he never disclosed any bonus income in his court documents - see

INDEX 33 OR Ct.Tr. 2/12/92, pp.132-142.). Although Petitioner and her counsels, (Honr. Judge Kirkpatrick and Mr. Riffee) have questioned the truthfulness in the Defendant's testimony all through 7 years Court proceedings, none of the West Virginian Court Authorities ever required the Defendant to submit his 1988 Income Tax Returns to verify his actual earned income to the Court.

However, in contradiction to all of the above sworn affidavit and sworn testimony in the Court Hearings, the Defendant attaches an "ATTACHMENT -3," with his "Answer to Petition and Supplemental Memorandum of the Defendant", under cover letter of June 14, 1995 to the special Judge Jolliffe's Court; (46 pages document with 5 Attachments - INDEX 66), and in the last page of attachment -3, for the first time it was revealed that the Defendant's 1988 employment wages, from January 1, 1988 through July 6, 1988 was $39,230.90 for 27 weeks (Approx. $75,555.00 per year), and not the $60,000.00 annual wage/salary that the Defendant has disclosed to the Court and to the Petitioner's Counsel at the time of the purported separation agreement.

Additionally, all through the above years of Court Proceedings, the Defendant has maintained that he has no hidden assets and no money put aside in any tax deferred fund. However, in November 1992, the Petitioner's lawyer (Honr. Judge Kirkpatrick) received information from an unnamed employee of the Defendant's employer (Tracy Hylton's company) that the Defendant had been deferring a large portion of his earned income outside the Country (in Canada), since 1986 or earlier. Thus Plaintiff's counsel caused a subpoena duces tecum to be issued for Defendant's Employer's Accountant/Controller, dated November 24, 1992. However, the requested information was never provided to the Petitioner at the time of earing in Law Master Lazenby's Court on December 1, 1992 and this information about the Defendant's Concealment of Tax Deferred wages was communicated to Master Lazenby in a special letter from Plaintiff's Counsel in December 1992. The above information about the Defendant's concealment of hidden funds was also conveyed to Special Judge Jolliffe, via "plaintiff's Response to Defendant's Answer to Petition", on June 26, 1995; and such information was also included in the Petitioner's Appeal to the West Virginia Supreme Court on February 14, 1997, (pp.5-6; 16-18).

To the total disbelief and complete amazement of the Petitioner and her Counsel, each of these West Virginian Court Authorities turned a deaf ear to such discovery of fraud, concealment and unconscionable conduct on the

part of the Defendant and now the Petitioner's appeal is rejected with no explanation therefor.

(2) – DOES THE LAW PERMIT EACH OF THESE COURT AUTHORITIES TO BE TOTALLY BLIND AND NEGLIGENT TO THE MEANING OF FAIRNESS AND EQUALITY IN THEIR JUDICIAL DISCRETION SO THAT THEY CAN RUBBER STAMP THE WRONGFUL DECISIONS AGAIN AND AGAIN, IN A LITIGATION PROCESS THAT HAS LASTED 11 YEARS ?

The Supreme Court of the United States has defined the Due Process of Law in the case of "People v Leyra, 302 NY 353, 98 NE2d 553", as "A denial of due process has been defined as failure to observe that fundamental fairness essential to the very concept of justice." (16A Am Jur 2d, "Constitutional Law", p.961)

The Purpose and effect of "Due Process" is defined as; "The due process clause has as its purpose the insuring of the fair and orderly administration of the laws, and the protection of people against having the government impose burdens upon them except in accordance with the valid laws of the land. The Bill of Rights in general, and the due process clause of the Fourteenth Amendment in particular, were designed to protect the fragile values of a vulnerable citizenry from the overbearing concern for efficiency and efficacy ....." (16A Am Jur. 2d "Constitutional Law"; p.963).

However, in the present case, the West Virginian Court Authorities have totally ignored such inherent principle of Justice, and used a punitive approach to deprive the Petitioner a fair and equitable share in the marital property, including the "Waiver of Alimony" after seventeen years marriage, due to misrepresentation of the marital house valuation offered by the Defendant and accepted by the Court, at the time of the Final Hearing on July 12, 1988.

The Petitioner's Counsel argued that presently, " Petitioner is in jeopardy of losing the marital home, as a result of the "agreement's" buy-out provisions, while a child in her custody, still under the age of 18 years resides with her, as a result of the Circuit Court's acceptance of a valuation of the marital home, clearly agreed by the parties from uncontroverted evidence, on remand from this Court, to have been twenty-five thousand dollars ($25,000.00) less than stated by the parties at the time the so-called original "oral agreement" was made, and which resulted in Petitioner's Waiver of

Alimony. This, and the gross inequity in the division of marital property pursuant to the so-called "oral agreement" is clearly wrong and abuse of discretion." (Motion to renew Petition 12/8/97, p.2).

West Virginia Code 48-2-16(b) provides, in part: "In cases where the parties to an action ..... have executed an agreement which is incomplete or insufficient to resolve the outstanding issues between the parties, or where the Court finds the separation agreement of the parties not to be fair and reasonable or clear and in ambiguous, the Court shall proceed to resolve the issues outstanding between the parties. The court shall consider following factors in determining the amounts of alimony, child support or separate maintenance, if any to be ordered under the provisions of section [West Virginia Code 48-2-13] of this article as supplement to or in lieu of the separation agreement...." The factors include, inter alia, the duration of the marriage, income, and assets affecting earnings."

The purported settlement proposal, now enforced by the Court, requires the Wife/Petitioner to pay to Husband a lump sum of $20,000.00 with 10% annual interest for his interest in the marital domicile. It is significant to note here that the original purported agreement of July 12, 1988, signed by Judge Canterbury did not allow 10% interest payment to the Defendant. The enforcement of the Final Order by the Court, translates into almost $50,000.00 payment to the Defendant, which is almost two years gross salary of the Petitioner, and such payment constitutes a nearly impossible debt imposed on the Wife by the West Virginia Court Authorities. The Court showed no consideration for the dis-advantaged party (wife/Petitioner) who now receives only $6,500.00 for a marriage of seventeen years, and a monumental debt - approximately $50,000.00 to be payable to the Husband/Defendant whose annual salary was $75,000.00+ almost four times the amount of the Wife's fixed annual income. Additionally, a great disparity in the respective incomes of the parties is due in part to the Wife foregoing further education and career development to further Defendant's career and take care of the children at home and be a homemaker.

Despite all of these facts spread in the records, the present West Virginia Justices have taken a path of Judiciary Indiscretion and Blind Sanctions for the Lower Court's Abuse of Power and Discretion. These Justices' message, to the Single, Divorced, Working, Mothers, is loud and clear that "We are going to Rubber Stamp the Lower Court Authorities's decision" - regardless of West Virginia Law; irrespective of the gross inequity

in the marital property distribution, despite blatant injustices and repeated abuse of discretionary power by any or All of the Lower Court Authorities.

(3) DOES THE LAW ALLOW SANCTION FOR EACH OF THESE COURT AUTHORITIES - LAW MASTER; CIRCUIT JUDGE AND OTHERS TO DISCRIMINATE IN HOW AND WHEN THEY IMPLEMENT THE STATE LAW REGARDING CHILD SUPPORT CALCULATION AND "PRO TANTO" CHILD SUPPORT REDUCTION?

The definition of "Due Process" is described as; "Due process of law is the primary and indispensable foundation of individual freedom; .. . The fundamental guaranty of due process is absolute, and not merely relative....is a legal right assertable in the courts. The term "due process of law" asserts a fundamental principle of justice."

"The content of due process is a function of many variables, including the nature of the right affected, the degree of danger caused by the proscribed condition or activity, and the availability of prompt remedial measures.....if, on the other hand, it is found to be arbitrary, oppressive, and unjust, it may be declared to be not due process of law."

"l..... A state may regulate the procedure of its courts in accordance with its own conception of policy and fairness unless it offends some principle of liberty or justice ranked as fundamental," (16A Am. Jur. 2d, "Constitutional Law" pp.955-972).

In the present case, the West Virginian Court Authorities have violated every principle of "Due Process" inspite of repeated pleadings and prayers from the Petitioner to the Court to review this case properly for last 11 years.. The Petitioner's counsel argued in her Appeal of 2/7/1997, that the Defendant's gross income on July 6, 1988, immediately prior to hearing where the purported "agreement" was announced, was Thirty-Nine Thousand two Hundred Thirty and 90/100 Dollars ($39,230.00), through 27 weeks of 1988. Applying the melson Formula, and deducting the taxes allowed under the formula, the Defendant's monthly net income was $3,592.78, compared to the Petitioner's monthly net income of $1,335.00. Under the formula, the child support payable from respondent to the Petitioner was incorrectly calculated as $1,000.00 a month support for two infant daughters. Applying the Melson Formula, the correct child support should have been calculated at the sum of $1,087.67 monthly. The Defendant should not profit from his misrepresentation and failure to disclose accurate income to the Court. The above amount does not include interest income from his investments, or

income from other tax deferred income/investments etc..

The persistent refusal of the Circuit Court to calculate the Child Support Formula correctly has clearly and substantially harmed the Petitioner and her children and this is another example of the prejudicial treatment towards the Petitioner by the above Court Authorities. Each of the above Court's persistent effort to overlook the Defendant's wage concealment and misrepresentation, therefore, has affected the proper calculation of the Melson Formula, and thereby has deprived the petitioner and her children the correct arrearages and correct interest payments to them for almost 10 years (July 1988 through present 1998). The Court's Inaction, in this case, has obstructed the Law and Proper Justice for the Petitioner and her children. Such blatant miscarriage of Justice, further evidences the West Virginia State Judicial Authorities' Discriminatory practice in how and when they Implement the State Law. The above facts and reality of this case should warn every Divorced/Single, Working Mothers in West Virginia that Law can be bent and twisted to suit the well situated Male Litigant, even it means violating the Constitutional Rights of the Women/Citizens, and it is time to take our cause to the higher authorities beyond the control of the West Virginia's Judicial System.

The Circuit Court abused its discretion, evidencing its clear intent throughout almost two dozens proceedings to uphold the purported oral agreement, considering its upholding of clearly erroneous procedures followed by Disbarred Law Master Sayre; Recused Judge Canterbury, replacement Master Lazenby and special Judge Jolliffe, in allowing "PRO TANTO" child support reduction to credit the Defendant while children were visiting with him.

The oral separation "agreement" was materially modified by the Circuit Court in September, 1989, which concluded that joint custody was improper, but left intact provisions which would implement joint custody, and further allowed the defendant to obtain credits against child support for any home installment loan payments he made as well as for the time the children were visiting with him, all contrary to the MELSON FORMULA, adopted by the West Virginia Legislature and approved by the West Virginia Supreme Court of Appeals. Thus, Defendant had been claiming the mortgage interest payment in his Income tax (claimed $15,000.00+ tax benefits from 1988 to 1995), while the Petitioner had been paying the home mortgage loans from the child support money for over 8 years, because Judge Canterbury's Order of February 20, 1990, mandated that the Petitioner pays the home installment

loan from the Child Support money.

The original, unsigned written agreement, incorporated by reference into the Final Divorce Decree specified that the child support required to be paid by Defendant to the Petitioner shall be reduced "Pro Tanto" during two (2) three-week Summer vacation periods, when respondent is to have physical possession of said children. It is significant to note here that, there was no reference whatsoever of this "Pro Tanto" reduction of support at the Final Hearing, at which time the parties supposedly agreed to all terms of the purported settlement.

Incredibly, after Counsel for Defendant has previously admitted in his brief filed with the West Virginia Supreme Court of appeals in October 1990, that the "Pro Tanto" credits and setoffs were to be disallowed insofar as they were not mentioned on the record at the time of the July 12, 1988 oral separation "agreement". However, notwithstanding such admission, Judge Jolliffe's opinion letter, dated September 28, 1995, "rubber-stamped" Law Master Lazenby's opinion of November 29, 1993. Needless to say, Master Lazenby also did not comprehend the above Brief's content or overzealously chose to ignore such unlawful practice - a blatant favoritism towards the Defendant.

In contradiction to his own admission to the West Virginia Supreme Court, Counsel for Defendant argued and presented an Order for entry to Judge Jolliffe which would have sustained the "Pro Tanto" credits. To the great amazement of the Petitioner and her counsel, Judge Jolliffe agreed to sustain the "pro tanto" device in his Opinion letter of September 28, 1995, and in his court hearing on January 18, 1996. The improper "Pro Tanto" credits against child support initiated in July 1988 continued in effect, along with a stay in determining and enforcing child support arrearage collection, until Judge Jolliffe reversed his own ruling in the Final Order of December 17, 1996. Although Judge Jolliffe was finally compelled to "OVER-RULE" his own Ruling due to Petitioner's repeated written objections to indicate that such a ruling was unlawful, this special Judge erred as a matter of law by allowing to stand such an arbitrary, oppressive, and unjust device for over 8 years, to penalize the Petitioner and enforce her to live in constant financial worries, and bear the burden of monumental legal expenses with her meager financial condition.

Obviously, either Special Judge Jolliffe was not reading the documents submitted to his Court - Revised Petition for Review of May 22,

1995; Court Hearing transcripts of July 12, 1988; and follow-up Responses from the petitioner's counsel on July 3, 1996; Or this Special Judge held a position of authority to "Rubber Stamp" the Master Lazenby's abuse of discretionary power. The above scenario of eight years, verifies these Court Authorities' total dis-regard for law and Individual Female Citizen's right to the proper Child Support. Such Court activities definitely "Obstructed the Justice and Due Process" to the Petitioner and she had been blatantly discriminated in receiving proper justice in such Courts in West Virginia.

(4) DOES THE LAW GRANT AN OVERZEALOUS LAW MASTER (Who is aspiring to be the a Judge in the midst of this litigation), THE AUTHORITY TO DENY "DUE PROCESS" TO THE PETITIONER IN HIS COURT AND TO HOLD A CHILD SUPPORT REDUCTION HEARING ON HIS OWN INITIATIVE, WITHOUT A MOTION OR PETITION BEING FILED BY THE DEFENDANT, AND WITHOUT NOTICE BEING SERVED TO THE PETITIONER OR HER COUNSEL OF RECORD?

The purpose and effect of "Due Process" is defined as "The effect of the guaranty is to inhibit the taking of one person's property and giving it to another, contrary to settled usages and modes of procedure, without notice and opportunity for a hearing. An attempt by Statute to work such a change of ownership would be a glaring violation of this guaranty and could not be defended as an exercise of the police power."

The Procedural "due process" is defined as, "Procedural due process makes it a necessary that one whom it is sought to deprive of such a right must be given notice of this fact (that is, he must be given notice of the proceedings against him), he must be given an opportunity to defend himself..... and the problem of the propriety of the deprivation, under the circumstances presented, must be resolved in a manner consistent with essential fairness." It further states that....."no one shall be personally bound until he has had his day in court, by which is meant until he has been duly cited to appear and has been afforded an opportunity to be heard. Judgement without such citation and opportunity lacks all the attributes of a judicial determination; it is judicial usurpation and oppression and can never be upheld where justice is fairly administered." (16A Am Jur 2d "Constitutional Law pp. 963-968).

The Petitioner frustrated with the continued child support reduction and financial worries to make the house payment, maintain the home with proper utilities and repairs etc.; as well as take care of her infant children

from her limited budget and reduced child support money, tried to seek help from the Child Support Enforcement Office in 1994. The Petitioner, therefore, attempted to have child support arrearages determined and obtain judgment for the same in her Motion for Decretal Judgement filed on her behalf by the Child Advocate Office on April 29, 1994. A hearing was set to obtain child support arrearage money from the Defendant on May 12, 1994.

However, to the total disbelief of the petitioner, (the petitioner's trial Counsel was not present because Child Advocate Counsel was to assist in this process), the overzealous Master Lazenby decided on his own, to recalculate child support amount and modified the child support payment to the Petitioner from $1,000.00 a month to $863.09 per month, based on the verbal testimony of the Defendant. Even though the Defendant had not filed a Petition for Modification of Child Support or sent a notice of such Hearing to the Petitioner or her counsel (Honor. Kirkpatrick), Master Lazenby inquired of the Defendant what his current take-home pay was. As expected, the defendant further minimized his wage information to the Court - that his take-home pay is $3,200.00 - almost 13.5% less net monthly income, than previously recorded in the Circuit Court documents in 1987, and such figure was applied to the Formula to calculate $1,000.00 monthly child support payment in 1988.

Law Master Lazenby, therefore, relied completely upon the Defendant's oral statement to re-calculate the Melson Formula, all contrary to the principle of the child support calculation instrument adopted by the West Virginia Court Authorities. Additionally, the Statute required that any child support modification has to be based on 15% reduction or increase in the income of the parties. However, in this case, Master Lazenby did not think that he had to abide with the Statutory requirement of the Law, because he was intent upon penalizing the Petitioner, even it meant denying her the Due Process of Law. Furthermore, Master Lazenby also ordered during the above hearing that he would not allow the Petitioner to request any more Child Support Arrearage Collection Hearing. The aspiring Master Lazenby (hoping to be appointed as Judge with Powerful Citizen's Recommendation), therefore, denied the Petitioner the free access of the Courts when her ability to pursue child support arrearages were suspended by the Circuit Court's Orders following Master Lazenby's recommendation - "holding in abeyance" and staying further determination and collection of Child support arrearages from May 20, 1994, through December 17, 1996.

To the total disbelief of the Petitioner and her Counsel, the West

Virginia Supreme Court of Appeals is not willing to hear this case, despite the serious Violation of the Constitutional Rights of the Petitioner, Obstruction of Justice and denial of "Due Process" to this Female Litigant, who is struggling for last 11 years to obtain proper justice in this land of Freedom and Equality. The above Court Authorities have taken a punitive approach towards the Petitioner, in that all the wrong doings of the Court are done with, and they have complete Immunity from the Judicial System, hence if the Court rejects her Petition and Appeal, without any rhyme and reason, the Little Woman will go away.

Similarly, the Petitioner's Counsel argued in his "Motion to Renew Petition for Appeal and Application for Stay of execution Pending appeal, and Disposition on Appeal" dated December 8, 1997 that, "There is no excuse for the manner in which Petitioner has been denied full and complete access to the Courts of this State, and due process. The final decision of Judge Jolliffe was an attempt to "sweep under the carpet" the failure of the judicial system to actually conduct a full inquiry into the fairness and equitableness of the so called "agreement" division of assets, waiver of alimony, and treatment as to both amount and arrearages of child support." (Motion to Renew Petition, 12/8/97, P.3).

If this was a criminal case, this kind of Justice can translates into the literal thinking of these Court Authorities that "Although Petitioner was sent to jail by pure mistake on the part of the Court Authorities, the mistake is recognized by the Court, however, they are not going to do anything about it for 30 months, and let the Petitioner stay in jail, until they are compelled to take further action in this case." These kind of Court Actions send a strong message to the average, Divorced/Single, Working Mother in West Virginia that she will not be heard by the higher Court authorities in Civil cases, no matter how tyrranical the lower Court authorities' decisions are; hence, do not expect any kind of corrective action from the present Justices of the Supreme Court of Appeals of West Virginia.

(5) DOES THE LAW PERMIT A DISBARRED LAW MASTER'S INTERVENTION INTO A CONTINUING CASE THAT HE HAS PREVIOUSLY HEARD AND MADE AN UNFAVORABLE DECISION AGAINST THE FEMALE PETITIONER, AFTER HIS DISBARMENT AND RESIGNATION AS LAW MASTER ? AND DOES THE LAW ALLOW THE NEW LAW MASTER TO REQUEST THE DISBARRED LAW MASTER TO WRITE AN UNOFFICIAL HAND WRITTEN OPINION, THEN ARRANGE TO LODGE THIS DOCUMENT INTO THE

BEST AVAILABLE COPY

COURT FILE WITHOUT THE KNOWLEDGE OF THE PETITIONER AND HER COUNSEL?

The Judicially definition of "Due Process" is stated as "....that due process of law must be understood to mean law in the regular course of administration through courts of justice." Or " law according to the settled course of judicial proceedings, or in accordance with natural, inherent, and fundamental principle of justice."

The Purpose and effect of Due Process is further defined as ".....the vague contours of due process do not leave judges at large, and they may not draw on their merely personal and private notions and disregard the limits that bind them in their judicial function.".
(16A Am Jur 2d "Constitutional Law" P.961-964).

While reviewing the Court file in preparation for the hearing of December 1, 1992 before Master Lazenby's Court, Petitioner herself discovered a document by accident which was lodged in the Court file and which caused her to raise disturbing questions about her case. When this action was remanded to the Circuit Court from the West Virginia Supreme Court of Appeals, the Law Master in office was Truman Sayre. Mr. Sayre heard a portion of the evidence, under the direction of the Supreme Court of appeals, then he was disbarred as an attorney and was required to resign his post as Family Law master. Thereafter, Mr. K. Bruce Lazenby was appointed to carry out Mr. Sayre's term as Law Master.

The disturbing document in Court file was a hand-written and partially typed-written (like an amateur typist), a two page opinion written by Disbarred Law Master Sayre on June 25, 1992, almost one month after his disbarment from his position, addressing to counsel for both parties and apparently arranged to have it lodged in the Court file, without the knowledge of the Petitioner and her Counsel. In this opinion, the disbarred Master stated a position entirely against the plaintiff and fully in favor of the Defendant, without any rhyme or reason. Thus damage was already done to the Plaintiff's case, although further new hearing was scheduled for Master Lazenby's independent review on 12/1/1992.

The Petitioner, immediately requested that her counsel ask for an explanation from the replacing Master Lazenby. The Law master Lazenby's clerk informed the Plaintiff's Counsel that Master Lazenby has requested an opinion from the disbarred Master Sayre, although Master Lazenby has previously ordered that he would make an independent decision in this case.

The Petitioner and her counsel had been given a false impression by Master Lazenby that his decision would be based on the evidence presented to his Court Hearing on December 1, 1992.

The unlawful intervention by disbarred Master Sayre has already tainted the ruling in the subject opinion Order of Master Lazenby, that was subsequently Rubber Stamped by Judge Jolliffe. The back door maneuver between two Law Masters definitely denied the Petitioner the "Due Process of Law" in the Civil Court, thereby violating the petitioner's Constitutional Right to a fair and Impartial Hearing and proper justice under the Law of this Country. Everyone of these Court authorities were so impressed with the Defendant's high salaried job, alliance with a powerful Coal Operator in Southern West Virginia, and they became personally involved in this backdoor maneuvering - an unlawful process, hoping to fulfill some of their own personal agenda. These involved Court Authorities have been engaged in such persistent efforts for Obstruction of the "Due Process" and Justice in their Court, that it defeats the purpose to even appear in any of the West Virginia's Court System.

The above miscarriage of justice in my case (like the litigation process in many other Female Citizens of this State), very clearly and convincingly tell the Ordinary, Single, Working Mothers in West Virginia, "DO NOT EXPECT PROPER JUSTICE AND DUE PROCESS UNDER THE PRESENT COURT AUTHORITIES AND THEIR COURT SYSTEM, BECAUSE WEST VIRGINIA'S SUPREME COURT JUSTICES ARE TOO BUSY WRITING OPINIONS TO CLARIFY THE LAW, AND NOT INTERESTED IN ADDRESSING THE UNFAIRNESS AND INEQUITY RENDERED TO THE AVERAGE FEMALE CITIZENS OF THIS STATE.

PRAYER

Petitioner submits that she has been seriously aggrieved by the West Virginia Judicial System, and prays that the Supreme Court of the United States grant her Petition for Writ of Certiorari; that this COURT order that this matter be given expedious priority; that Petitioner be allowed the full possession and entitlement of the marital domicile without any claim by the Defendant in lieu of the Alimony, that she never received; that she and her property rights might be protected from attachment, execution and or partition/sale by the Defendant, who wishes to execute and immediately attach the marital home of the parties on the basis of the purported oral separation agreement; that child support be properly determined based on

Defendant's truthful and actual wage/salary at the time of Final Hearing of July 12, 1988, and reinstated immediately to its prior proper amount so that child support arrearage might be promptly collected; that Defendant or the West Virginian Court authorities be required to reimburse her for all attorney fees, court costs including the Court reporters' fees, Appeal etc. that petitioner has expended in her continuing legal struggle for almost 11 years; and for such other and further relief, in law and equity as this Court deems just and fair.

Respectfully submitted,

Ira Gangopadhyay

(Ms.) IRA GANGOPADHYAY
PETITIONER FOR
WRIT OF CERTIORARI
P.O. Box. 308
Skelton, West Virginia 25919
(304) 255-5708

STATE OF WEST VIRGINIA

At a Regular term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 13th day of February, 1991, the following order was made and entered:

Ira Gangopadhyay, Plaintiff below,
Appellant

vs. No. 19608

Nirmal K. Gangopadhyay, Defendant
Below, Appellee

The Court, having maturely considered the transcript of the record and the oral argument and briefs of counsel thereon, is of opinion for reasons stated in writing and filed with the record that there is error in the judgement of the Circuit court of raleigh county, rendered on the 14th day of November, 1989. It is therefore considered and ordered by the Court that said judgement be, and the same is hereby set aside, reversed and annuled, and that the appellant, Ira Gangopadhyay, do recover of and from the appellee, Nirmal K. Gangopadhyay, her costs about the prosecution of her appeal in this Court in this behalf expended. AND this action is remanded to the Circuit Court of raleigh County for a further hearing with regard to the validity of the separation agreement in accordance with the principles stated and directions given in the written opinion aforesaid and further according to law; all of which is ordered to be certified to the circuit Court of raleigh County.

The syllabus of points adjudicated, prefixed to the written opinion aforesaid, prepared by Chief justice miller, was concurred in by justices mcHugh, Workman, Brotherton and Neely.

A True Copy "S/Ancil G. Ramey"

Attest:----------

Clerk, Supreme Court of Appeals

APPENDIX - A

IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

Ira Gangopadhyay
Plaintiff

vs. Civil Action No. 87-D-1764

Nirmal Gangopadhyay
Defendant

TEMPORARY ORDER

On May 12, 1994 came the Plaintiff and the Defendant, in person and pro se and also John M. Richardson, Child Advocate of Raleigh County who appeared pursuant to WV Code S 48A-3-3a. Thereafter evidence was presented and based upon which the Family Law Master makes the following findings, conclusions and recommendations:

1. The Family Law Master, on its own motion, considered the issue of child support and upon the testimony of both parties and after application of the West Virginia Child Support Guidelines determined that child support shall be eight hundred sixty three dollars and nine cents ($863.09) per month beginning June 1, 1994 and shall continue each month thereafter until further order of the court.

2. The Plaintiff shall be required to make the monthly house payment.

3. The issue of arrears, if any, is held in abeyance and leave is granted to the parties to re-notice following the disposition of the final order which the Family Law Master is recommending to the Circuit Court.

4. Wage withholding shall continue for the collection of support and all payment shall be made to the Child Advocate Office whose address is Post Office Box 247, Charleston, West Virginia 25321. Wage withholding of any arrears shall be held in abeyance until the court has had opportunity to consider the issue.

5. The cost of these proceedings are taxed to the Defendant.

6. It is noted that the Child Advocate and the Plaintiff object to the change in child support initiated by this order.

Entered this 20th day of May, 1994.

"S/_____"
K. Bruce Lazenby, Family Law Master

Prepared and presented pursuant
to WV Code §48A-3-3a by:

"s/_____"
John M. Richardson
Child Advocate Attorney
407 Neville Street
Beckley, WV 25801

Inspected by:

_____
H. L. Kirkpatrick, III

IN THE CIRCUIT COURT OF RALEIGH COUNTY,
WEST VIRGINIA

IRA GANGOPADHYAY,
Plaintiff,

v. Civil Action No. 87-D-1764

NIRMAL GANGOPADHYAY,
Defendant.

ORDER

On the 17th day of December , 1996, came the defendant, Nirmal Gangopadhyay , in person, and by his counsel; and came the plaintiff, Ira Gangopadhyay, plaintiff, in person, and by her counsel; upon the complaint of plaintiff, regularly filed and matured for hearing; upon the answer and counterclaim of defendant, duty served upon counsel for plaintiff, regularly filed; and upon reply of plaintiff duly served upon counsel for defendant, regularly filed; before the Family Law Master, to whom this action was heretofore referred; upon the report of said Family Law Master tendered unto the Court; upon the decree entered by this Court on the recommendation of the Family Law Master; upon the decision of the West Virginia Supreme Court of Appeals on the appeal taken by plaintiff; upon the order of remand by the Supreme Court of Appeals to the Circuit Court of Raleigh County, West Virginia; upon the remand by said Court to the Family Law Master of Raleigh County, West Virginia; upon the proceedings before the Family Law Master in accordance with said remand order; upon the second report of the Family Law Master tendered unto this Court and dated November 29, 1993, finding, inter alia, that the plaintiff was fully able to understand and appreciate the terms of the agreement reached as spread on the record in this case at the hearing held on July 12, 1988 before the Family Law Master in Raleigh County, West Virginia and that such were reached without fraud, duress or other unconscionable conduct, and also finding that the agreement was not unfair to plaintiff; that she understood its terms; that she was not intimidated or acting under duress; that she conferred with her competent counsel fully; and that defendant's disclosures regarding marital assets and his income and finances were not inadequate, a copy of said report is attached hereto and incorporated herein by reference,

APPENDIX -C

upon the order of the Honorable Frank E. Jolliffe, Judge of the Eleventh Judicial Circuit of West Virginia to whom this matter was assigned upon the recusal of the Honorable Thomas Canterbury, Circuit Judge of the Tenth Judicial Circuit before whom this matter had been previously heard, denying plaintiff's exceptions set forth in plaintiff's Petition and Revised Petition for Review and affirming the recommendations of the Family Law Master, Bruce Lazenby and directing the entry of a final order based thereon; upon the plaintiff's notice of substitution of counsel, petition for stay of execution, amended notice of hearing and amended petition for stay of execution, objections and exceptions to the proposed Order; and upon all pleadings and orders heretofore entered in this action; and upon the sworn testimony of the parties herein.

UPON CONSIDERATION WHEREOF, the Court after careful review of the evidence adduced before the Family Law Master does find and conclude as follows:

1. That all findings, conclusions, provisions and terms of all orders hereinbefore entered and unchanged by Court decree remain and continue in full force and effect.

2. That the property settlement agreement as spread on the record in this case on July 12, 1988 is valid and binding in all respects except as to the award of joint custody.

3. That the Family Law Master carefully reviewed the agreement of the parties as spread on the court record on July 12, 1988 with respect to the voluntariness of said agreement and the fairness and reasonableness thereof.

4. The finding of the Family Law Master that said agreement was entered into freely and voluntarily and without coercion, fraud or other unconscionable conduct is hereby accepted, ratified and confirmed.

5. That the finding that said agreement was fair, equitable and reasonable is fully supported by defendant's evidence and is hereby accepted, ratified and confirmed by the Court.

6. That the finding of the Family Law Master that defendant's disclosure of income, finances and marital assets was complete is accepted, ratified and confirmed by the Court.

7. That the said property settlement agreement is in all respects fair, equitable and reasonable so far as the respective interests of the parties are concerned.

8. That the plaintiff and defendant are both fit and proper person to have the care, custody and control of the minor children and the Court so finds.

9. That the Family Law Master examined exhaustive financial data in reaching his factual findings as herein set forth, which said data has also been carefully reviewed by the Court.

10. That the parties hereto have entered into a property settlement agreement which was spread on the record at the hearing held on the 12th day of July, 1988, which, except as to the award of joint custody, is found to be verified as to its mutual fairness, equity and reasonableness at the dates of each hearing herein held before the Family Law Masters with respect to all of its terms.

It is accordingly ORDERED as follows:

1. It is ORDERED and ADJUDGED that the plaintiff shall be awarded custody of the two infant children; namely, Maalobeeka, aged 17 years and Noopur, aged 13 years.

2. It is further ORDERED and ADJUDGED that the defendant is to pay to the plaintiff, for the support and maintenance and education of the two infant children of the parties herein, the sum of $500.00 per month, per child, or a total of $1,000.00 per month, until such time as each child reaches the age of 18 years, is married or otherwise emancipated, said payments to be payable in two equal monthly installments of $500.00 per month. It is further ORDERED and ADJUDGED that for the purposes of filing Federal and State income tax returns, plaintiff shall be entitled to claim Mallobeeka, the older child of the parties as a dependent and defendant shall be entitled to claim Noopur, the younger child, as a dependent.

3. It is further ORDERED and ADJUDGED that plaintiff and defendant each shall continue their programs of medial and hospitalization coverage on the children provided by their respective employers. With respect to all expenses incurred by or on behalf of said infant children not paid by the several programs of insurance coverage on said children, all optical and dental expenses, including orthodontia, will be paid by the defendant contributing seventy-five(75%) percent of said cost and plaintiff contributing twenty-five (25%) percent of said cost.

4. It is further ORDERED and ADJUDGED that both parties shall irrevocably designate as beneficiaries under their program of life insurance a testamentary trust for use and benefit of their children, Maalobeeka and Noopur.

5. It is further ORDERED and ADJUDGED that the defendant shall be entitled to liberal rights of visitation with the infant children as detailed below and at such other times as do not interfere with their health, education and welfare, with reasonable notice to plaintiff.

(a). Defendant shall have the children on alternate weekends from Friday at 4:15 p.m. until the following Sunday at 7:00 p.m. Deviation from the alternate weekend visitation schedule can only be allowed once per quarter for a valid reason in the best interest of the children.

(b). Defendant and plaintiff shall alternate the following holidays and festivals:

DURGA PUJA FESTIVAL (Bengalee Hindu Culture), Easter, Thanksgiving and Christmas.

(c). Defendant and plaintiff shall alternate visitation with said children during the entire period of their summer vacation from public schools in the following manner: Both plaintiff and defendant shall have the right to keep the children for two three-week periods of time during the summer vacation months giving each parent the right to have children in their custody for a period of six weeks during that time. Plaintiff shall elect the three-week periods which she desires to have said children and upon that election Defendant will take the other two three-week periods to keep the children with him. Plaintiff shall give sixty (60) days notice before the end of the school year of the dates of the two three-week periods she chooses to have said children in her possession during the summer vacation period. Defendant shall then be entitled to the other two three-week periods during the summer vacation term. While the children are with either parent, they shall have the right to telephone the other parent at least two times each week during said three-week period they are in the other parent's custody.

(d) Defendant will be free to travel with the children in the continental limits of the United States while they are in his possession without any restrictions. Defendant or plaintiff shall give four weeks notice to the other party of any trips he or she plans during the summer or Christmas vacation. It is expressly understood and agreed by and between the parties that neither will remove the children from the continental limits of the United States for purpose of limited travel without first notifying the other spouse of their intentions to do so and securing the permission of the other spouse so to do. When such permission is sought, neither plaintiff or defendant will unlawfully withhold permission for such limited travel out of the country.

(e) Defendant shall have the right to consult freely with the doctors and teachers of said children and to have free access to speak and to visit with the children when they are with the babysitter from time to time and during reasonable hours of the day. Children shall be allowed and encouraged to speak with non-custodial parent by telephone at reasonable hours of the day.

(f) If Plaintiff is out of town during her employment or business the children shall be allowed to visit and stay with their father in lieu of staying

with a babysitter. Defendant will also be permitted to see the children occasionally at school so long as such visitation does not interfere with their education.

(g) Defendant shall have the right alternately with plaintiff to spend the children's birthdays with each of them.

6. It is further ORDERED and ADJUDGED that neither party shall be entitled to receive or the other party obligated to pay any sum of money in the form of alimony to the other now or at any time in the future by reason of or growing out of this marriage and neither shall be entitled to petition the Court in the future to secure an alimony award.

7. It is further ORDERED and ADJUDGED that the plaintiff shall be entitled to pursue automatic withholding from income of the defendant as a mean of collecting support in arrears by thirty (30) days or more without further court action; and at any time the defendant may ask the child advocate office to commence income withholding, all pursuant to West Virginia Code, 48-2-15 (a).

8. It is further ORDERED and ADJUDGED that the provisions of the agreement for the purchase of the defendant's interest in the marital domicile by the plaintiff for the sum of Twenty Thousand Dollars ($20,000.00) is ratified. It is recited on the record of July 12, 1988 that such sum is due and payable by the plaintiff to the defendant within ninety (90) days of said date, and therefore defendant is entitled to recover interest at the legal rate from the said due date. Defendant will then convey good and marketable title to any and all interest in that real estate he may now possess so that it shall become the sole and separate estate of the plaintiff. It is further ORDERED and ADJUDGED that the plaintiff will pay off the mortgage indebtness against the property, which is outstanding as of the date of the agreement, July 12, 1988, and will indemnify and hold harmless the defendant from any liability to which he may be exposed by her failure or refusal so to do.

9. It is ORDERED that the ten (10) gold coins weighing 1.0 oz. Each, consisting of five (5) kruggerand coins (Montreal and Los Angeles) acquired by the parties during their marriage shall be held and kept in the plaintiff's possession for the benefit of the infant children and that each child shall receive one-half (½) of the said coins upon her marriage. If one of said children should die before marriage, the balance of said coins shall go to the surviving daughter. If both daughters die prior to their marriage, then said coins shall be divided equally between the parties hereto. When delivered to the child or children at marriage, it shall be expressly understood that said delivery is a gift to said daughter from both of her parents.

10. Plaintiff shall have as her sole and separate estate that certain

1986 Honda LX automobile in her possession and defendant will assign and convey any right and title he may have thereto to plaintiff so that said property shall become plaintiff's sole and separate estate. Plaintiff will make payments on the debt against said automobile beginning July 15, 1988.

11. It is further ORDERED and ADJUDGED that defendant shall have as his sole and separate estate, free from claim to plaintiff, that certain 1982 Oldsmobile Cutlass Supreme automobile.

12. It is further ORDERED that the plaintiff will receive all of the assets of the proprietorship business known as "Gifts Unlimited" so that said assets shall become her sole and separate estate. Plaintiff shall likewise assume and pay all liabilities and indebtness thereon and indemnify and hold harmless the defendant from any liability to which he may be exposed by reason of her failure to pay those debts.

13. Plaintiff shall have as her sole and separate estate the household furniture, furnishings and personal property located in the marital domicile, except for the following items:

One (1) cashmere carpet, one (1) sewing machine; two (2) power saws, one (1) power drill, one (1) power sander, and those certain items of property which have been mutually agreed upon as set forth in the list prepared by the defendant in a letter to the plaintiff, dated march 15, 1988 and which is a part of the record in this case.

14. Defendant will pay all past due utility bills and car insurance claims and any medical payments through and including any claims due as of July 15, 1988.

15. It is ORDERED that plaintiff shall have as her sole and separate estate the stamp collection which is identified in the disclosure statements filed in the record of this case, free from any claim by defendant.

16. Defendant if ORDERED to pay Pat fragile, the sum of Five Hundred Dollars ($500.00) towards the attorney's fee incurred as a result of this representing the interests of the plaintiff in this action.

17. It is further ORDERED that in addition to the foregoing benefits, plaintiff shall have as her sole and separate estate free from any claim by the defendant the following property, assets securities, and interest:

(a). All savings, holdings and securities held in her name;

(b). The pension available to her through her employment;

(c). All of the jewelry acquired by her during the marriage of the parties;

(d). The IRA accounts held as of July 12, 1988.

18. It is ORDERED that in addition to the other benefits noted, the defendant shall have as his sole and separate estate, free from any claims by the Plaintiff, the following enumerated property, assets, securities and

interests:

(a). All of his savings entitlement, property and securities held in his name; and

(b). The IRA account now held by defendant in his name.

19. It is further ORDERED and ADJUDGED that plaintiff and defendant shall become and remain the joint custodians of all of the custodial accounts held for and on behalf of the infant children of the parties. It is ORDERED that this provision vests in the plaintiff's joint custodianship of said accounts but in no way affects and the money manager of the two estates.

20. The award of joint custody set forth in the property settlement agreement between the parties is expressly overruled and held for naught and any reference to credit a pro tanto abatement of child support payments while the infant children are in the custody of the defendant during the summer two (2) three-week visitation period is overruled and held for naught.

21. Because appellate proceedings and post-appellate proceedings before the Family Law Masters and the Circuit Court have resulted in no modification of the agreement of the parties or the final order entered herein, defendant moved that all fees and costs, including a reasonable attorney's fee for defendant's motion is denied.

The entry of this order shall not constitute a waiver of the plaintiff's claim, if any, to arrearage claimed to be due under the temporary order herein entered in this proceeding, or defendant's claim to any reimbursement credit to which he may be entitled thereunder.

This order is entered nunc pro tunc as of July 12, 1988. Execution on this Order is hereby ORDERED STAYED for sixty (60) days from the date of the entry of this order, pending appeal to and in the Supreme Court of Appeals of West Virginia.

To all of which each of the parties hereto object and except.

The Circuit Clerk is hereby ORDERED to send certified copies of this order to counsel of record.

ENTERED this 17th day of December, 1996 the foregoing is a true copy of an order entered in this office on the 18th day of December, 1996.

"S/Frank E. Jolliffe"
JUDGE

"S/Janice B. Davis"
Circuit Clerk of Raleigh County, West Virginia

PRESENTED BY:

"S/ James B. McIntyre "
JAMES B. McINTYRE
McIntyre & Collias
124 Capitol Street
P.O. Box 70007
Charleston, WV 25301-0007
Counsel for Defendant

INSPECTED BY: (Subject to objections in letters dated August 8, 1996 and December 12, 1996)

"S/ Charles A. Riffee, II"
Charles A. Riffee, II
Caldwell, Cannon-Ryan & Riffee
P.O. Box 4347
Charleston, WV 25364
Counsel for Plaintiff

CALDWELL
Cannon-Ryan
& Riffee
LAWYERS

December 12, 1996

Honarable Frank E. Jolliffe
Judge of the 11th Judicial Circuit
Greenbrier County Courthouse
200 N. Court Street
Lewisburg, West Virginia 24901

Re: **Ira Gangopadhyay v. Nirmal K. Gangopadhyay**
Civil Action No. 87-D-1764

Dear Judge Jolliffe:

Enclosed is an Order prepared by Mr. McIntyre which I have signed as having inspected with the understanding that I preserve for the benefit of my client the objections set forth in my letter dated August 8, 1996, addressed to you with copies to my client and Jim McIntyre. I propose that the Court enter the Order with my objections set forth in my August 8, 1996 letter, simply attached, and with the understanding that the plaintiff preserves any further objections and exceptions she might have to the Order upon a review of the entire record.

As mentioned in my previous letter of August 8, 1996, I object to the Order providing for certain things such as determination of tax dependency when there is nothing in the July 12, 1998 hearing transcript to incidate the parties agreed to this. I also object to failure to include or clarify the effective date of this Court's most recent ruling denying "pro tanto"credits. Without this, there will be difficulty in determining substantial child support arrearages owing by the defendant.

Thanking you for your time and attention to this matter, I am
Very truly yours,

"S/Charles A. Riffee, II
Attorney at Law

CAR/mab
Enclosure
cc: James B. McIntyre, Esquire
Ms. Ira Gangopadhyay

APPENDIX - D

IN SUPREME COURT OF APPEALS
OF WEST VIRGINIA
AT CHARLESTON

IRA GANGOPADHYAY,
Plaintiff-Below, Petitioner,

v.

NIRMAL GANGOPADHYAY
Defendant-Below, Respondent.

From the Circuit Court of Raleigh County
of West Virginia

Civil Action No. 87-D-1764

PETITION FOR APPEAL AND APPLICATION FOR STAY OF EXECUTION PENDING APPEAL, AND DISPOSITION ON APPEAL

Charles A. Riffee, II
CALDWELL, CANNON-RAYAN & RIFFEE
P.O. Box 4347
Charleston, West Virginia 25364

Counsel for Petitioner

APPENDIX --E

SUPREME COURT OF APPEALS
OF WEST VIRGINIA
CHARLESTON

IRA GANGOPADHYAY,
Plaintiff-Below, Petitioner,

V.

From the Circuit Court of
Raleigh County
Civil Action No. 87-D-1764

Appeal No._____

NIRMAL GANGOPADHYAY
Defendant-Below, Respondent.

PETITION FOR APPEAL AND APPLICATION FOR STAY OF EXECUTION PENDING APPEAL, AND DISPOSITION ON APPEAL

***To the Honorables, the Justices of the Supreme Court of Appeals of West Virginia*:**

Petitioner, Ira Gangopadhyay, by counsel, Charles A. Riffee, II, files this Petition pursuant to Rules 3 and 6 of the Rules of Appellate Procedure of the West Virginia Supreme Court of Appeals. This Petition for Appeal and Application for Stay of Execution is from the final order of the Circuit Court of Raleigh County, West Virginia, Special Judge, Frank E. Jolliffe presiding, entered December 17, 1996, which Order has granted Petitioner a stay of execution limited to sixty (60) days from the date of the entry of its final order.[1]

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[1] This case was originally heard by Law Master Truman Sayre on July 12, 1988. It was presented to this Court on Appeal in 1991, and was reversed and remanded with directions. Since then, this case has languished due to scheduling difficulties, the disbarment of the original Master, recusal of the original trial judge, and significant
delays in having orders entered.

I. THE KIND OF PROCEEDING AND NATURE OF THE RULINGS BELOW

This civil action concerns the decision of the Circuit Court on remand from the Supreme Court of Appeals of West Virginia to determine the validity of an oral separation agreement. The circuit court was directed to ascertain whether the parties understood its terms, and have voluntarily agreed to them without any coercion; and, further whether the terms of the oral separation agreement are fair and equitable. This Court noted that the last inquiry requires a disclosure of the financial background of the parties sufficient to justify the conclusion of the Law Master. It is from the decision of the Circuit Court (Special Judge Frank E. Jolliffe presiding) upholding the validity of the oral separation agreement that Petitioner appeals and seeks a stay of execution pending disposition on appeal.

II. STATEMENT OF FACTS

The essential facts in this case concern the inquiry mandated by this Court in its opinion in **Gangopadhyay v. Gangopadhyay**, 184 W. Va. 695, 403 S.E.2d 712 (1991), where the Court noted that there had not been sufficient independent inquiry to determine whether the parties understood the agreement or whether it was voluntary and free from coercion. In reversing the original circuit court decision which granted the divorce and upheld the oral separation "agreement," this Court further noted that the circuit court made a finding that the settlement was fair and equitable, but did not make an inquiry into the parties' financial background. In reversing, this Court held that where an oral separation agreement is dictated on the record, additional inquiries must be made by the Court or the Master to ascertain that the parties understood its terms and have voluntarily agreed to them without any coercion. Furthermore, this Court stated that the Court or Master must find that the terms are fair and equitable, and, that this latter inquiry requires a disclosure of the financial background of the parties sufficient to justify the conclusion of the Court or Master. The following statement of facts is a brief synopsis of the evidence which is discussed in more detail in the argument portion of this Petition. (Transcript references are included in **Argument** section of this Petition).

Briefly, the facts relative to "duress" clearly and convincingly demonstrate that the Petitioner was distraught on July 11, 1988, the day before the scheduled contested hearing, as well as at the hearing when the oral separation "agreement" was announced on July 12, 1988. She had been

unable to reach her counsel by telephone because the Respondent had her telephone disconnected. With two (2) infant children in tow, Petitioner was able to contact her attorney approximately 11:30 p.m., the night before the hearing during which time an argument ensued and her original trial counsel threatened to withdraw from representing her during the contested hearing. No discussion of any proposed agreement occurred that evening. This is corroborated by the testimony of a co-worker and psychiatric nurse, Bobbi Miller, on remand. This co-worker had to report to Princeton, West Virginia on a work assignment the day of the July 12, 1988 hearing, but made arrangements to drive back to Beckley for the hearing, under subpoena, only to discover that the hearing had prematurely concluded. There is also the substantial and weighty testimony of Carl Roop, associate counsel of Petitioner's original counsel, who described his role playing as opposing counsel immediately prior to the hearing for the purpose of preparing the Petitioner for a contested hearing; and, who described witnessing an argument between the Petitioner and her divorce counsel immediately after the hearing at which time the Petitioner was angry and distraught. Other factors as to "duress" include testimony as to Petitioner's occasional difficulty with the English language, and Indian cultural differences with respect to the general subservient role of women to men in their society and in official proceedings such as this case. Testimony was also developed as to the Respondent's treatment of the Petitioner at the time of the purported oral separation "agreement" which included his shouting at her. Also, in subsequent hearings, the Law Master found that the Petitioner was knowledgeable of domestic relations lawyers, but the lawyers the Law Master was referring to were in fact lawyers Petitioner consulted in regard to acts of domestic violence allegedly committed by Respondent, which the Law Master failed to mention in his recommended decision. Despite the self-serving terms of the final Order (prepared by Respondent's counsel after both counsel had submitted previous proposed orders, and Judge Jolliffe stated that despite the long delay, he would not prepare his own order), which concluded that Petitioner's counsel in the original divorce hearing was competent in these matters, no hearing was held, or evidence taken relative to the competence of Petitioner's counsel.

Although this Court mandated an inquiry into the fairness of the agreement, after several hearings held in 1992, the record clearly demonstrates that the Respondent did not fully disclose his income or assets as required by law, and that several substantial questions as to his income, investments, transfer and/or liquidation of investments remain and were not answered. For example, there is a great discrepancy in interest incomes

reported from year to year regarding certain investments, inclusive of investment income on custodial accounts for the children. The clear and convincing evidence is that the Respondent was not forthcoming and did not make sufficient and complete disclosure. For example, he continues to refuse to establish the Petitioner as a joint custodian of the investment accounts of the children, even though the oral separation "agreement" he wants upheld requires it. The evidence is that he did not disclose the whereabouts of certain investments, interest income, transfers or other information, including whether or not these accounts had been liquidated although this information was sought and requested by the Petitioner by subpoena and on cross-examination.

Importantly, on remand, in defendant Respondent's own Answer to Petition and Supplemental Memorandum of the Defendant, on the last page of Attachment 3 filed with the Court under cover letter of June 14, 1995, for the first time it was revealed that Respondent's 1988 income from January 1, 1988 to July 6, 1988, less than one week prior to the original divorce hearing, was $39,230.90 for twenty-seven (27) weeks, and not the $60,000.00 annual wages and additional $2,000.00 income from investments (the $1,800.00 business vehicle expense annual reimbursement is not net income) reported by the Respondent in his disclosure dated October 1, 1987, and tendered by his counsel to the Family Law Master at the time of the July 12, 1988 hearing, at which time the purported "agreement" was struck. The Court failed to consider or mention this in upholding the purported agreement, and in sustaining counsel for Respondent's objections to Family Law Master Lazenby's ruling that Respondent's 1988 income was not relevant to the issues to be determined. Respondent was on a course to make approximately $14,000.00 annually than he disclosed to the Petitioner and the Court, and to this day has never been required to testify, or submit written documentation as to his income during 1988, such as his tax return, over objection of Petitioner's counsel, and despite having been subpoenaed.

Not only did the Respondent file inaccurate and insufficient financial disclosures, as the record clearly and convincingly indicates, but the only valuation of the marital domicile was an appraisal obtained by the Petitioner and adopted by the Court. Although the Court adopted this appraised value of the marital home which was Twenty-Five Thousand Dollars ($25,000.00) less than the value of the home represented by the Respondent at the time of the July 12, 1988 hearing, the circuit court found this difference in value to be "insubstantial" and "inconsequential". This, and a division of marital assets under the terms of the oral separation "agreement" in a two to one ratio

favorable to the Respondent demonstrates that the agreement is "inequitable on its face" and patently unfair. This has the effect of eradicating the material consideration to be received by the Petitioner of the $20,000.00 equity in the marital home she was to have received as the quid pro quo for her waiver of alimony in the purported agreement after a seventeen year marriage.

Additionally, the oral separation "agreement" was materially modified by the Circuit Court which concluded that joint custody was improper, but left in tact provisions which would implement joint custody and further allowed the Respondent to obtain credits against child support for any home installment loan payments he made as well as for the time the children were with him, all contrary to the **Melson** formula adopted by the Legislature and approved by this Court.

Incredibly, after counsel for Respondent had previously admitted in his brief filed with this Court on the first appeal granted by this Court that "**pro tanto**" credits and setoffs were to be disallowed insofar as they were not mentioned on the record at the time of the July 12, 1988 oral separation agreement, after Judge Jolliffe entered his letter opinion dated September 28, 1995, counsel for Respondent argued and presented an order for entry to Judge Jolliffe which would have sustained the "**pro tanto**" credits. Although Judge Jolliffe finally agreed that the "**pro tanto**" credits were not proper, he erred as a matter of law, by allowing to stand until December 17, 1996, temporary orders where these "**pro tanto**" credits against child support have been allowed from the date of the July 12, 1988 hearings, as ruled upon in the recommended decision of Family Law Master Sayer, as well as Judge Canterbury's Order of September 15, 1989 (which was reversed and remanded by this Court), and again in Family Law Master Lazenby's Order of May 20, 1994. This is apparent in Judge Jolliffe's letter opinion dated September 28, 1995 and from the record, particularly pages 69-112 of the November 21, 1989 hearing, which allowed the **pro tanto** deductions from child support and disallowed wage withholding of child support. This is also substantiated by Attachment 10 to the Petitioner's Responses to Defendant's Answer to Petition submitted July 26, 1995. The improper "**pro tanto**" credits against child support initiated on August 31, 1988 continued in effect, along with a stay in determining and enforcing child support arrearages until Judge Jolliffe's final order of December 17, 1996. Petitioner attempted to have child support arrearages determined and obtain judgment for the same in her Motion for Decretal Judgment filed on her behalf by the Child Advocate's Office on April 29, 1994. In his temporary order entered May 20, 1994, Law Master Lazenby continued to hold in abeyance determination of child support

arrearages due Petitioner from Respondent until a final order was entered, and Lazenby modified child support downward for the Respondent based upon his oral testimony as to his income even though Respondent had not filed a Petition for Modification or noticed the hearing for modification relief. Lazenby allowed the reduction of monthly child support from $1,000.00 monthly to $863.09 monthly - clearly, on its face, not the fifteen (15) percent change required by statute and case law cited in the **Argument**, all to the detriment, and contrary to the best interests of the children. At the January 18, 1996 hearing, Judge Jolliffe continued the stay of determination and enforcement of child support arrearages upon the request of counsel for the Respondent until he entered the December 17, 1996 order.

It is apparent that both the Law Masters and the Circuit Court were intent upon upholding the validity of the oral separation "agreement". The shabby treatment Petitioner has received on remand is evidenced by Law Master Lazenby's request for former Law Master, but disbarred Truman Sayre, to write a letter report on the case after Sayre had been removed from the case, and which report upheld the oral separation "agreement" Sayre had previously recommended be approved. Petitioner's new counsel, now Judge Kirkpatrick, moved that this document be struck from the file.

The primary reason Petitioner seeks a stay of execution is that the oral separation agreement spread on the record at the July 12, 1988 hearing requires her to buy out her husband's "equity" in the home for the sum of Twenty Thousand Dollars ($20,000.00), which will be given effect by the **nunc pro tunc** provisions of the order when the stay granted by the Circuit Court expires, notwithstanding Petitioner's inability and impossibility of performing this portion of the agreement (in part due to the stay of determination and collection of delinquent child support), and notwithstanding the home being found to have a value of Twenty-Five Thousand Dollars ($25,000.00) less than Respondent represented at the time of the July 12, 1988 hearing and purported oral separation "agreement".

III. ASSIGNMENTS OF ERROR AND RULINGS

1. THE CIRCUIT COURT WAS CLEARLY WRONG, ABUSED ITS DISCRETION, AND COMMITTED REVERSIBLE ERROR IN UPHOLDING A PURPORTED ORAL SEPARATION AGREEMENT IN THE FACE OF SUBSTANTIAL CLEAR AND CONVINCING EVIDENCE THAT:

(a) PETITIONER WAS UNDER EXTREME DURESS AT THE TIME OF THE PURPORTED AGREEMENT AS SHOWN BY THE SUBSTANTIAL TESTIMONY OF HER TRIAL COUNSEL, HIS ASSOCIATE, A CO-WORKER, THE PETITIONER, AND AS A RESULT OF RESPONDENT'S CONDUCT, SO THAT SHE DID NOT FREELY OR VOLUNTARILY ENTER INTO AN AGREEMENT;

(b) PETITIONER WAS PROVIDED WITH INACCURATE AND INCOMPLETE FINANCIAL INFORMATION BY RESPONDENT, FROM WHICH SHE COULD NOT MAKE A KNOWING, INTELLIGENT AND INFORMED DECISION TO AGREE ON PROPERTY AND SUPPORT;

(c) SUCH SUBSTANTIAL, MATERIAL AND ERRONEOUS CHANGES AND FINDINGS WERE MADE WITH RESPECT TO THE PURPORTED AGREEMENT BY THE CIRCUIT COURT REGARDING CHILD CUSTODY, CHILD SUPPORT, AND THE VALUATION OF THE MARITAL HOME, THERE WAS NO MEETING OF THE MINDS, THE SINE QUA NON OF ANY AGREEMENT; AND,

(d) THE PURPORTED AGREEMENT IS SO INEQUITABLE AS TO DEFEAT THE PURPOSE OF THE MARITAL PROPERTY DISTRIBUTION STATUTE [W.Va. Code § 48-2-32], AND, CONSIDERING THE GROSSLY DISPROPORTIONATE INCOMES, THE DURATION OF THE MARRIAGE, AND UNWARRANTED DISPARATE DISPOSITION OF MARITAL ASSETS, IS SO PATENTLY UNFAIR, THAT IT IS UNCONSCIONABLE.

2. THE CIRCUIT COURT COMMITTED PREJUDICIAL AND REVERSIBLE ERROR AS A MATTER OF LAW IN STAYING AND KEEPING IN FORCE AND EFFECT, UNTIL A FINAL ORDER WAS ENTERED, TEMPORARY ORDERS ESTABLISHING CHILD SUPPORT AWARDS NOT BASED UPON THE MELSON FORMULA MANDATED BY THIS COURT, AND LEGISLATIVE RULE 78-16-1, et seq., ESTABLISHED PURSUANT TO W.Va. Code § 48A-2-8(b), AND HOLDING IN ABEYANCE DETERMINATION AND ENFORCEMENT OF SUBSTANTIAL CHILD SUPPORT ARREARAGES OWING BY RESPONDENT TO PETITIONER, EFFECTIVELY PREJUDICING PETITIONER'S RIGHTS TO

CHILD SUPPORT DUE HER, AND RENDERING COMPLIANCE WITH THE PURPORTED AGREEMENT IMPOSSIBLE.

3. THE CIRCUIT COURT ABUSED ITS DISCRETION, EVIDENCING ITS CLEAR INTENT THROUGHOUT THESE PROCEEDINGS TO UPHOLD THE PURPORTED ORAL AGREEMENT, CONSIDERING ITS UPHOLDING OF CLEARLY ERRONEOUS PROCEDURE FOLLOWED BY FORMER LAW MASTERS SAYRE AND LAZENBY IN ALLOWING "PRO TANTO" CREDITS AGAINST CHILD SUPPORT (NOTICEABLY ABSENT FROM THE LOWER COURT'S LETTER OPINION OF SEPTEMBER 28, 1995), AND REDUCTION OF CHILD SUPPORT CLEARLY WRONG, ON ITS FACE, LESS THAN THE FIFTEEN PERCENT (15%) REQUIRED BY LAW WITHOUT A PETITION TO MODIFY, NOTICE OF HEARING ON THE SAME, AND BASED ON UNDOCUMENTED ORAL TESTIMONY AS TO RESPONDENT'S INCOME, AND FURTHER, STAYING DETERMINATION AND COLLECTION OF SUBSTANTIAL CHILD SUPPORT ARREARAGES UNTIL ENTRY OF ITS FINAL ORDER.

4. THE CIRCUIT COURT'S ORDER IS CLEARLY WRONG, BEING CONTRARY TO THE CLEAR AND CONVINCING PROBATIVE EVIDENCE, AND CONTRARY TO LAW FOR ALL THE REASONS SET FORTH HEREIN.

IV. POINTS AND AUTHORITIES OF LAW AND ARGUMENT

STANDARD OF REVIEW

"In reviewing challenges to findings made by a family law master that also were adopted by a circuit court, a three-pronged standard of review is applied. Under these circumstances, a final equitable distribution order is reviewed under an abuse of discretion standard; the underlying factual findings are reviewed under a clearly erroneous standard; and questions of law and statutory interpretations are subject to a **de novo** review." **Burnside v. Burnside**, ___ W.Va. ___, 460 S.E.2d 264 (1995); and **Stephen L.H. v. Sherry L.H.**, 195 W.Va. 384, 465 S.E.2d 841 (1995).

1. The plaintiff was clearly under extreme duress, and did not freely or voluntarily enter into the purported separation agreement.

The Petitioner testified that on the evening before the Final Hearing, her telephone was cut off by her husband; she was unable to contact her lawyer until very late that night; she was out on the road with her two young crying children in tow trying to make contact with her counsel; and, that when she did get in touch with her lawyer, there was some question as to whether or not he would continue to represent her. The plaintiff further testified that she was under tremendous pressure, hungry and exhausted from her efforts expended to keep her children under control and get ready for the hearing next day. The plaintiff additionally testified that she did not arrive at any resolution with her lawyer when she talked to him that night because she was very upset(Ct. Tr.1/20/92, pp.50-54). The Petitioner further testified that she and her counsel of record, Pat C. Fragile, had a serious argument over the telephone from Mr. Saks's residence, (a distant neighbor) during which her counsel told her that he was not going to represent her the next morning at the final hearing. (Ct. Tr. of hearing 1/20/92; pp. 52-54).

A co-worker and psychiatric nurse, Bobbi Miller, testified that she saw Ms. Gangopadhyay on the night before the Final Hearing (July 11, 1988), and described her as appearing very upset, distressed, and in tears at 11:30 p.m., the night before the Final Hearing. She also testified in detail about the initial inability Ms. Gangopadhyay faced when trying to contact her lawyer (Ct.Tr. hearing of 1/20/92, pp. 75-77). Ms. Miller described how distraught the plaintiff became when Mr. Fragile screamed at her, and threatened to dismiss her as a client, (Ct.Tr. of hearing of 1/20/92; pp.83-85). She further testified that on the night before the Final Hearing there was no mention whatsoever by Petitioner of a settlement of any aspect of the case, and confirmed that the plaintiff was distraught, in tears and roaming the streets of Beckley attempting to contact her attorney with two infant girls in tow. Respondent had Petitioner's phone disconnected the day before the hearing. On the day of the scheduled contested final hearing, and under subpoena, Barbara Miller drove from a work assignment from Princeton to Beckley to testify on behalf of the plaintiff as she describes in her sworn testimony to the Court on 1/20/92 before Law Master Truman Sayre, but that the proceeding was prematurely over prior to her arrival before noon that day (July 12,1988)(Ct.Tr. 1/20/92; p.75). On remand, she also testified about cultural and language difficulties experienced by Petitioner. Ms. Miller testified that Petitioner had to rewrite some of her reports and papers at work, due to the Petitioner's misunderstandings based upon her difficulties with language and cultural background (Ct.Tr.1/20/92; p. 87).

The testimony of Carl W. Roop, who was at the time an associate counsel in the law firm of Wooton, Wooton & Fragile, is significant. Mr. Roop met with Ms. Gangopadhyay on the morning of the Final Hearing to engage in roll-playing as the opposing lawyer who would cross-examine the Petitioner later that morning. Mr. Roop was of the belief that at that time, the case was contested and would go to trial as he described in his testimony adduced before Master Lazenby on 12/1/92. Significantly, Mr. Roop characterized Ms. Gangopadhyay's demeanor as being very upset, agitated and distraught on the morning of the final hearing. Although Mr. Roop turned his attention during the day of the Final Hearing to other legal matters, he testified that he observed Ms. Gangopadhyay return to the office with Mr. Fragile and that the parties "had words"; that Ms. Gangopadhyay appeared displeased; and, that Mr. Fragile took her in his office behind closed doors (Ct.Tr.12/1/92; pp.22-24). Such testimony from an officer of the Court, and a witness as to Petitioner's distress immediately prior to, and after the hearing is entitled to great weight - especially, when considered with the argument of Petitioner's counsel to the trial court on November 28, 1988 and on March 29, 1989.

Petitioner's original trial counsel argued on behalf of Petitioner in support of exceptions filed with the Law Master, and to have the purported agreement set aside that Petitioner was intimidated by the process because of her cultural barriers and her conformity with the customary and expected behavior of Indian women to be silent, or, to reply in a perfunctory manner in the presence of men (there were four men and the Petitioner in the hearing room). He also confirmed that during the Final Hearing the Respondent started banging on the table and raised his voice at the plaintiff, and that on the night before the hearing, Petitioner was unable to communicate with her counsel until 11.15 pm., and she had to use a neighbor's telephone because her home telephone was disconnected that day by the Defendant.

The conduct of the Respondent in having Petitioner's phone disconnected immediately prior to the scheduled final divorce hearing must also be considered along with Petitioner having to obtain advice and representation with respect to domestic violence perpetrated on her by the Respondent on three separate occasions. In finding that Petitioner was educated, and had previous dealings with lawyers, the Law Master (and circuit court) neglected to consider all of the foregoing, including the fact that Petitioner's "previous dealings with lawyers" were to seek protection and representation in regard to said acts of domestic violence.

This Court remanded this case on appeal, in part :
"...to ascertain that the parties understood its terms and have voluntarily agreed to them without any coercion..." **Gangopadhyay v. Gangopadhyay**, 184 W.Va. 695, 403 S.E.2d 712 (1991).

"Duress" was defined in a divorce context by this Court as:

"...that degree of constraint or danger, either actually inflicted or threatened and impending which is sufficient in severity or in apprehension to overcome the mind and will of a person of ordinary firmness...The requirements of common-law "duress" have been Enlarged to include any wrongful acts that compel a person...to manifest apparent assent to a transaction without volition or cause such fear as to preclude him from exercising free will and judgment in entering into a transaction." **Warner v. Warner**, 183 W.Va. 90, 394 S.E.2d 74 (1990).

Although the Court found no duress in **Warner**, where appellee's "threats" to expose appellant's forgery and adultery were not idle "threats" in that the court found factual evidence to support them, no such factual scenario presents itself in this case.

In a subsequent case, although not finding the separation agreement involuntary, the Court reversed the lower court and law master's upholding of an oral separation agreement being "inequitable on its face", commenting on evaluation and approval of oral agreements entered into by parties to a divorce:

"This evaluation is not to be a perfunctory overview or rubber-stamp approval of the decisions of the parties. It must consist of a reasoned and thorough inquiry into the background financial status of the parties." **Hager v. Hager**, 190 W.Va. 399, 438 S.E.2d 579 (1993). See also the Court's comments in **Summers v. Summers**, 186 W.Va. 635, at 640, concerning review being: "an obvious recognition of the important issues at stake in a typical settlement agreement and the concomitant need to ensure that one party does not take advantage of the other when these interests are being compromised." Interestingly, on remand, the law master and lower court held the "agreement" to be unenforceable as being "patently unfair".

Summers v. Summers, ___ W.Va. ___, 465 S.E.2d 224 (1995).

2. The Petitioner did not knowingly and intelligently give an informed consent to the purported oral agreement, because Respondent did not make a full and complete financial disclosure as to his income, and the marital assets subject to equitable distribution, and, in fact grossly misrepresented his income to be approximately Fourteen Thousand Dollars gross less annually than he represented to Petitioner and the Court at the time of the July 12, 1988 hearing. Respondent has liquidated, and continues to conceal from Petitioner certain investments, and investment income as a result of the Court upholding Law Master rulings that Respondent's 1988 income was not relevant, and that Respondent had made proper disclosure in the face of uncontroverted proof of Respondent's misrepresentation, concealment, and intentional refusal to disclose income and assets as required by W.Va. Code § 48-2-33, and 16, in effect, and as amended.

W.Va. Code § 48-2-33 requires a full disclosure of one spouse's financial assets to the other spouse at the time of the divorce, and contemplates a meaningful hearing on the subject of equitable distribution of property at which time the spouse submitting financial data may be cross-examined concerning the nature, origin and amount of assets. **Buckler v. Buckler**, 466 S.E.2d 556, 195 W.Va. 705 (1995); **Preece v. Preece**, 465 S.E.2d 917 (W.Va. 1995), **Metzner v. Metzner**, 191 W.Va. 378, 446 S.E.2d 165 (1994); **Hamstead v. Hamstead**, 178 W.Va. 23, 357 S.E.2d 216 (1987), overruled on other grounds; and **Roig v. Roig**, 178 W.Va. 781, 364 S.E.2d 794 (1987).

W.Va. Code § 48-2-16(b) provides, in part:

"In cases where the parties to an action ...have executed an agreement which is incomplete or insufficient to resolve the outstanding issues between the parties, or where the court finds the separation agreement of the parties not to be fair and reasonable or clear and unambiguous, the court shall proceed to resolve the issues outstanding between the parties. The court shall consider the following factors in determining the amounts of alimony, child support or separate maintenance, if any, to be ordered under the provisions of sections thirteen and fifteen [**W.Va. Code** § 48-2-13 and 48-2-15] of this article, as a supplement to or in lieu of the separation agreement..." The factors include, inter alia, the duration of the marriage, income, and assets affecting earnings.

In the case at bar, in the purported oral separation "agreement", the Petitioner waived any right or entitlement that she may have to alimony and

support payable to her by Respondent, even though the marriage was of long duration (seventeen years), and, for much of that time, she served as a homemaker.

There was a great disparity in the respective incomes of the parties. In fact, Respondent's income was more than triple than that of the Petitioner due in part to the Petitioner foregoing further education and career advancement to further respondent's career. On remand, in Respondent's Answer to Petition and Supplemental Memorandum of the Defendant filed with the court under cover letter of June 14, 1995 by his counsel, in Attachment 3 attached thereto, Respondent's gross income on July 6, 1988, immediately prior to hearing where the purported "agreement" was announced, was Thirty-Nine Thousand Two Hundred Thirty and 90/100 Dollars ($39,230.90) through 27 weeks of 1988, not the $60,000.00 annual income, $2,000.00 from investment income and reimbursement of approximately $1,800.00 for vehicle expense (not net income) represented to the Petitioner and Family Law Master by the Respondent's financial disclosure dated October 1, 1987 and by Respondent's counsel at the time of the July 12, 1988 hearing. This false lower income was also represented to the Court by the Respondent in the handwritten part of Attachment 1 dated May 11, 1989 attached to the Respondent's Answer to Petition and Supplemental Memorandum of Defendant which was submitted to the Court by his counsel's cover letter of June 14, 1995.

The defendant has failed to provide documentation repeatedly requested and subpoenaed in regard to all of his income, inclusive of the 1988 tax return, and information concerning earnings from all his investments, inclusive of, but not limited to, the custodial accounts for the children. The defendant has also failed and refused to name the plaintiff as co-custodian of the custodial accounts for the children as the "purported" agreement would provide, much less reveal their whereabouts.

Considering Respondent's intentional refusal and failure to make proper disclosure of income and assets in light of Petitioner's substantially lower income, the undervaluation of the marital home by the Respondent by $25,000.00 (determined to be insignificant and insubstantial by the Law Master and Court) when Petitioner's consideration for a waiver of alimony was $20,000.00, and the substantial child support arrearages owing from Respondent to Petitioner, it is clear that Petitioner did not, and could not have knowingly, and freely entered into a fair, informed, voluntary and enforceable agreement with Respondent.

Petitioner urged the lower court to enter an order correctly determining the child support under the Melson formula to be the sum of One Thousand Eighty-Seven and 67/100 Dollars ($1,087.67) monthly from August 1, 1988 through the present date in Plaintiff's Response To Defendant's Motion For Modification Of Temporary Order, And Motion For Entry Of Order Determining Correct Child Support On The Basis Of Melson Formula Based Upon Existing Documentation In The Court File, And For Entry Of An Order Determining Arrearages And Interest On Child Support Arrearages served July 3, 1996 and filed in the Circuit Clerk's Office on July 9, 1996, but the Court has refused to consider the Motion even after it was pointed out that the Court had continued the temporary orders which contained the stay order mentioned above (until entry of the final order), and that the Petitioner was without remedy since the Law Master wouldn't conduct a hearing pending the stay order until entry of the final order. From the record this Court can calculate the arrearages, (adding in decretal interest), now in excess of $21,800.00, or should either remand the matter back for immediate determination of child support arrearages, applying the correct child support formula as mentioned above, and to determine decretal interest thereon as the Child Advocate's proper motion requested in 1994, but which was held in abeyance by Law Master Lazenby, and stayed by Judge Jolliffe. The plaintiff is clearly and substantially harmed and prejudiced, and the same has worked a great injustice to her and the children born of the marriage. Correct arrearages and correct interest should be determined on the basis of correct application of the **Melson** formula. **Holley v. Holley**, 181 W. Va. 396, 382 S.E.2d 590 (1989) and **Gardner v. Gardner**, 184 W. Va. 260, 400 S.E.2d 268 (1990).

The Respondent's last minute attempt to have the court change the child support from the $863.09 monthly sum to the $1,000.00 monthly sum in the December 17, 1996 order after previously asking for, and receiving an order keeping the temporary orders, including the stay on child support arrearage proceedings, demonstrates the clearly erroneous act of Law Masters in this case, and, like the **Hager** case (pp. 15-16 herein) **supra**, that Judge Jolliffe "rubber-stamped" the same, or had not sufficiently reviewed the record to correct it before then. It also demonstrates that no meaningful, intelligent, informed or fair agreement could have been arrived at between the parties for reason of the Defendant's lack of candor, lack of disclosure of financial assets, misrepresentations to the Court as to income, being in arrears in payment of improperly lowered child support, and other materially substantial errors.

It should seem obvious that lowering the child support from One Thousand Dollars ($1,000.00) monthly to Eight Hundred Sixty-Three and

09/100 Dollars ($863.09) is and was, clearly, on its face, not a fifteen percent (15%) reduction which would justify modification under existing case law. Because of these serious court errors, Petitioner has been denied monies properly due her for the support of the children, as well as arrearages and decretal interest allowed by law.

Consider also evidence presented to the law master concerning Respondent's highly suspicious investment shifting and/or liquidation, as shown by the total lack of reported interest income from certain investments as in previous years (and no concomitant capital gains, or other disposable income reported by Respondent). An analysis of the Respondent's 1986 and 1987 Income Tax Returns (interest income and capital gains from sales of stocks, bonds, and other securities) with subsequently obtained information demonstrates that Respondent liquidated and/or shifted investments without disclosing the same in an approximate amount of One Hundred One Thousand Two Hundred Thirty-Four Dollars ($101,234.00). The evidence, on remand, disclosed that the Respondent, in violation of the Temporary Order prohibiting disposition of marital property, liquidated an IRA account in the approximate amount of Thirty Thousand Dollars ($30,000.00) on June 30, 1988 (a few days prior to Final Hearing); went to different branches of the same bank on the same day and deposited sums of less than Ten Thousand Dollars ($10,000.00) at each so that the transactions would not be reported; kept the money for a period of time; and thereafter reinvested the money at a significant loss, in another IRA account with an out-of-state financial institution, and did not disclose this prior to the purported oral "agreement". (Tr. Hearing of 2/12/92, pp. 154-164; Tr. Hearing of 4/10/92, pp. 8-26).

Respondent never produced, under subpoena, true copies of income tax returns for 1988.[2] His accountant could not be served with a subpoena duces tecum by petitioner's counsel prior to the final hearing on remand. Copies of Defendant's Income Tax Return submitted by him appear to be altered by use of

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[2] To meet the disclosure requirements of **W.Va. Code** 48-2-33 [1993], the West Virginia Supreme Court, by order dated 18 February 1994, effective 1 March 1994, requires the parties in a divorce or child support case to disclose their assets and liabilities, as required by **Rule 11(a)** of the **Rules of Practice and Procedure for Family Law** [1993], on standard forms promulgated by this Court or 'on a form that substantially complies with the form promulgated by the supreme court of appeals.' **W.Va. Code** 48-2-33(c) [1993]." Syl. Pt. 2, **State ex rel. Erickson v. Hill**, 191 W.Va. 320, 445 S.E.2d 503 (1994). Hearings on disclosure in this case were held prior to adoption of these **Rules**, and **Erickson, supra**.

"white-out", while W-2 statements were illegible. His counsel's objection as to the relevancy of 1988 income was sustained. Considering the morass of Respondent's financial dealings, the law master and lower court erred as a matter of law in failing to allow Petitioner's counsel sufficient leeway to pursue lines of questioning and areas of pertinent concern to establish the financial background of the Respondent. Respondent also refused to execute IRS Form 4506 which would have enabled counsel for Petitioner, and the court, to have examined true copies of tax returns on file with the IRS.

3. The court abused its discretion, and was clearly wrong in leaving in tact that part of the oral "agreement" effectively implementing joint custody while ruling that the granting of joint custody, as set forth in the oral "agreement", was improper in this case, and in finding inconsequential the negative $25,000.00 difference in value of the marital home when compared with the value disclosed by Respondent prior to the purported agreement, as shown by the only appraisal evidence in the case tendered by Petitioner, and accepted by the Court on remand. This negated the consideration Petitioner was to receive for her waiver of alimony after a seventeen year marriage, which was $20,000.00 equity in the home under the terms of the purported "agreement". (This is why she has to pay Respondent $20,000.00 instead of $40,000.00 for his equity in the home). Unless this Court grants this appeal and a stay beyond the sixty day stay granted by the lower court, Respondent will be able to execute on the judgment, and force the sale of the home because Petitioner is not able to buy out Respondent's equity in the home, and pay off the mortgage within ninety days as the purported "agreement" provided. This is largely due to Respondent's intentional failure and refusal to pay all the child support he owes to Petitioner, and the lower court has prevented Petitioner from pursuing child support arrearages.

In face of the only independent, professional appraisal of the marital home which established its value at $90,000.00, and its own conclusion that joint custody was not proper in this case, the Court allowed the oral "agreement" to stand by keeping the joint custody implementation provisions, and allowing to stand that provision of the oral "agreement" which would require Petitioner to buy-out Respondent's interest in the marital home for the sum of $20,000.00, effectively eliminating Petitioner's supposed consideration for her waiver of alimony, and otherwise disproportionate distribution of marital assets. Traditionally, custody and possession of the marital home with the requirement that a noncustodial parent, with substantial income, make the mortgage payments, are usually the most important and substantial matters of concern of

the custodial parent who has substantially less income. Petitioner is, and was, indisputably, the primary caretaker of her two daughters, who were of tender years at the time the parties separated.

W.Va. Code § 48-2-15 provides, in part, that the court may order payments to third parties, such as home installment loans, as, or incident to child support. This court has observed that one of the primary purposes of using the marital domicile as the home for the custodial parent and minor children is to diminish the monetary payments necessary for their shelter. Stillings v. Stillings, 167 W.Va. 796, 801, 280 S.E.2d 689,692 (1981). Although finally overruling Respondent's persistent efforts to keep as part of the final order set-offs, or "pro tanto" credits for the benefit of Respondent those home installment loan payments which were made by him, as well as other credits against child support including credits for the time the children were with him during extended vacation periods, the court abused its discretion and erred as a matter of law in allowing to stand temporary orders allowing such credits until its final order of December 17, 1996.

4. The Court abused its discretion and was clearly wrong in upholding the purported oral separation "agreement" in face of substantial, clear and convincing evidence that it is "inequitable on its face", patently unfair, and unconscionable.

The grossly disproportionate incomes, waiver of alimony with a 17 year marriage as a homemaker and in furtherance of her husband's career, the "inconsequential" or "insubstantial" loss of equity in the home based on the appraised value the law master and court found and adopted, the improper crediting or offsetting of those home loan installment payments actually made by Respondent against his child support (as well as other credits when the children were with him and not the custodial primary care parent), and Petitioner's testimony and evidence of the grossly disproportionate division of marital assets favorable to Respondent (not an easy task considering Respondent's insufficient and incomplete financial disclosure, and significant questions raised as to the whereabouts of certain investments and their income) demonstrate conclusively, clearly and convincingly, by the substantial weight of the evidence that the purported oral separation "agreement" is "inequitable on its face", patently unfair and, in fact, unconscionable.

This Court has so determined in cases with far less inequity. See Hager, Summers, and Summers, again on remand, **supra**. This Court has also reversed a lower court's decision to uphold a separation agreement on a mistaken value

of a pension without going so far as to find actual fraud or misrepresentation, although the Appellant alleged it. **Langdon v. Langdon**, 182 W.Va. 714, 391 S.E. 2d 627 (1992).

This case cries out for reversal. This Court was careful to remind the law master and circuit court on remand that the relationship between husband and wife is one of confidence and trust, as follows:

"Both W.Va. Code §§ 48-2-16(a) and 48-2-32(b) require that a separation agreement be fair and reasonable and not obtained through fraud, duress, or other unconscionable conduct. We have also recognized that a fiduciary relationship exists between husband and wife when they deal with each other." **Gangopadhyay**, **supra,** at 699, citing **Marshall v. Marshall**, 166 W.Va. 304, 273 S.E.2d 360 (1980).

In **Marshall** this Court, reversing a stock transfer between spouse made as a condition to reconciliation, held:

"One who receives property from another with whom he has a confidential relationship has the burden of showing that the Transfer was fair and with the utmost good faith..."

It is clear from the Respondent's failure to be forthcoming with respect to his income, his undisclosed investments and transfers of property, and his unwillingness to name Petitioner as joint custodian of the children's investment accounts (as the purported oral separation "agreement" provides), much less reveal their whereabouts, the income from his investments, and any information regarding their transfer and/or liquidation, that the purported "agreement", which the circuit court has upheld, was not arrived at in good faith, and involves intentional concealment, and unconscionable misrepresentation by the Respondent.

Pursuant to **W.Va. Code** § 48-2-16(b), 48-2-15 and 48-2-32, in cases where the Court finds that a separation agreement was obtained by fraud, duress, or other unconscionable conduct on the part of one of the parties, or is "so inequitable as to defeat the purposes of [the Marital property disposition statute]," the court must grant fair and equitable alimony, child support, and separate maintenance in lieu of, or as a supplement to the separation agreement. Likewise, equitable distribution of marital assets must occur according to a three step process:

"The first step is to classify the parties' property as marital or non-marital. The second step is to value the marital assets. The third step is to divide the marital estate between the parties in accordance with the principles contained in W.Va. Code § 48-2-32." **Cross v. Cross**, 185 W.Va. 414, 407 S.E.2d 720 (1991); **Whiting v. Whiting**, 183 W.Va. 451, 396 S.E.2d 413 (1990); and, **Wood v. Wood**, 184 W.Va. 744, 403 S.E.2d 761 (1991). See also **Bettinger v. Bettinger**, 183 W.Va. 528, 396 S.E.2d 709 (1990).

Further, this Court has the inherent power to do all things that are reasonably necessary for the administration of justice within its jurisdiction. **Shields v. Romine**, 122 W.Va. 639, 13 S.E.2d 16 (1940). Petitioner needs immediate and expeditious equitable relief, as prayed for herein, to prevent further injustice, and to preserve support and assets for her benefit, and her children.

5. The Court committed reversible error as a matter of law in allowing the temporary orders to stand from August 31, 1988 (after the July 12, 1988 hearing) to December 17, 1996, which temporary orders allow credits and off-sets against child support contrary to the Melson formula, [W.Va. Code §§ 48A-2-8, 48-2-13 and 15, 6 W.Va. Code of State Rules 78-16-1 et seq.], without finding the application of the guidelines to be unjust, inappropriate, or contrary to the best interests of the children. This stayed Petitioner from pursuing a correct determination, and collection of the arrearages Respondent is alleged to owe Petitioner. See **Holley v. Holley**, 181 W.Va. 396, 382 S.E.2d 590 (1989) creating a rebuttable presumption that the amount of the child support awarded pursuant to the guidelines is the correct amount to be paid. Also, **Gardner v. Gardner**, 184 W.Va. 260, 400 S.E.2d 268 (1990).

See the discussion on pages 11 through 24 of this brief for relevant facts supporting this. As argued earlier, if the Law Master and Court had actually looked at the calculation erroneously made by the Family Law Master, it would be apparent on its face that the modification (without Petition for Modification, Notice, or supporting documentary evidence) was clearly not less than eighty five percent of the existing child support order required for modification under the guidelines. **W.Va. Code** § 48-2-15(e); **Zaleski v. Zaleski**, 189 W.Va. 454, 432 S.E.2d 53 (1993). This was raised to the Circuit Court with notice to Respondent on a Motion for Reconsideration, and must be remedied retroactively in the best interests of the children.

6. SUCH SUBSTANTIAL, MATERIAL AND ERRONEOUS CHANGES AND FINDINGS WERE MADE WITH RESPECT TO THE PURPORTED AGREEMENT BY THE CIRCUIT COURT REGARDING CHILD CUSTODY, CHILD SUPPORT, AND THE VALUATION OF THE MARITAL HOME, AND THE RESPONDENT INTENTIONALLY FAILED AND REFUSED TO MAKE PROPER DISCLOSURE OF ASSETS BY CONCEALMENT AND MISREPRESENTATION, THERE WAS NO MEETING OF THE MINDS - THE SINE QUA NON OF ANY AGREEMENT.

Plaintiff reiterates once again that without proper disclosure, and the concealment and misrepresentation of income and assets by the Respondent prior to the July 12, 1988 hearing, there could be no possible meeting of the minds, the sine qua non for there to be any agreement. **Wheeling Downs Racing Association** v. **West Virginia Sportservice, Inc., et al,** 216 S.E.2d 234, 158 W.Va. 935 (1975), and earlier, in the same case, 199 S.E.2d 308, 157 W.Va. 93 (1973); and **Martin v. Ewing**, 112 W.Va. 332, 164 S.E. 859, (1932), wherein it is stated: "A meeting of the minds of the parties is a **sine qua non** of all contracts.".

It is also clearly apparent that the purported "agreement" is inequitable, patently unfair, and unconscionable.

CONCLUSION

It is submitted that the foregoing considerations, the duress Petitioner was under at the time of oral separation "agreement" when she expected a full advocacy of her rights in a contested divorce action, together with the Respondent's intentional misrepresentation, concealment of assets and income, failure and refusal to provide sufficient and complete financial disclosure, prior to the July 12, 1988 hearing, and after remand, as well as the patent unfairness and inequity of the purported agreement, the abuse of discretion and errors at law committed by the Circuit court in upholding the Law Master's recommended decision in this case, demand that this oral "agreement" be held to be unenforceable, and that this Court give a clear mandate to the lower court to facilitate prompt and proper determination of child support, alimony, and equitable distribution of property awards considering the undue delay and manifest injustice suffered by Petitioner for the last decade, in directing the lower court to award Petitioner alimony, child support, and equitable distribution of marital assets, in lieu of said "agreement" in accordance with **W.Va Code §§ 48-2-16(b); 48-2-15,** and **48-2-32**, as amended.

PRAYER

Petitioner submits that she has been seriously aggrieved by the legal process of this case in Raleigh County, and prays that this Court grant her Petition for Appeal and Review; and upon granting the same, that this Court grant her a Stay of Execution pending disposition on Appeal, without the requirement of bond, considering the equities of the parties, and the equity in the jointly owned marital home; that this Court order that this matter be given expeditious priority; that child support be properly determined, and reinstated immediately to its prior proper amount so that child support arrearages might be promptly and properly determined and collected, and that Petitioner be allowed to proceed immediately to recover delinquent child support in arrears in excess of $21,800.00, with interest; that, as part of the Stay of Execution pending disposition on appeal, she and her property rights might be protected from attachment, execution, and or partition/sale by the Respondent who wishes to execute and immediately attach the marital home of the parties on the basis of the purported oral separation "agreement" which calls for Petitioner to purchase his interest in the marital home for $20,000.00 within 90 days of acceptance of the "agreement" which time and purchase requirement is now effective by the **nunc pro tunc** entry of the final order by the circuit court unless the stay pending appeal, awarded by the circuit court for a period of 60 days after its entry, is extended, and the relief sought herein is granted; that she be awarded her costs and attorneys fees expended in her continuing legal struggle, and on appeal; and for such other and further relief, in law and in equity as this Court deems just and fair.

Respectfully submitted,
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AUTHORITIES

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WV SUPREME COURT

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanwaha County, on the 19th day of November, 1997, the following order was made and entered:

Ira Gangopadhyay, Plaintiff
Below, Petitioner

vs.) No. 970317

Nirmal Gangopadhyay, Defendant
Below, Respondent

On a former day, to-wit, February 14, 1997, came the petitioner, Ira Gangopadhyay, by Caldwell, Cannon-Ryan & Riffed, and Charles A. Riffed, II. Her attorneys, and presented to the Court her petition praying for an appeal from a judgement of the Circuit Court of Raleigh County, rendered on the 18th day of December, 1996, with the record accompanying the petition. Therefore, on the 6th day of March, 1997, came the respondent, Nirmal K. Gangopadhyay, by McIntyre & Collias, and James B. McIntyre, his attorneys, and presented to the Court his written response in opposition thereto.

Upon consideration whereof, the Court is of opinion to and doth hereby refuse said petition for appeal. Chief Justice Workman did not participate.

A True Copy

Attest: "S/ Rodney Teal"
Clerk, Supreme Court of Appeals

APPENDIX- F

PETITION NO. 970317

SUPREME COURT OF APPEALS OF WEST VIRGINIA
AT CHARLESTON

IRA GANGOPADHYAY,
Plaintiff-Below, Petitioner,

V

NIRMAL K. GANGOPADHYAY
Defendant-Below, Respondent,

From the Circuit Court of Raleigh County
West Virginia

Civil Action No. 87-D-1764

MOTION TO RENEW PETITION FOR APPEAL AND APPLICATION FOR STAY OF EXECUTION PENDING APPEAL, AND DISPOSITION ON APPEAL

SUBMITTED BY:

Charles A. Riffee, II
Counsel for Petitioner
Caldwell, Cannon-Ryan & Riffee
P.O. Box 4347
Charleston, West Virginia 25364

APPENDIX -- G

SUPREME COURT OF APPEALS
OF WEST VIRGINIA
AT CHARLESTON

IRA GANGOPADHYAY,
Plaintiff-Below, Petitioner,

v.

From the Circuit Court of
Raleigh County
Civil Action No. 87-D-1764

Appeal No. 970317

NIRMAL GANGOPADHYAY,
Defendant-Below, Respondent.

MOTION TO RENEW PETITION FOR APPEAL AND
APPLICATION FOR
STAY OF EXECUTION PENDING APPEAL, AND
DISPOSITION ON APPEAL

To the Honorables, the Justices of the Supreme Court of Appeals of West Virginia:

Petitioner, Ira Gangopadhyay, files this Motion to Renew Petition for Appeal and Application for Stay of Execution Pending Appeal, and Disposition on Appeal after the Court refused to hear the same by order
entered November 19, 1997, Justice Workman not participating. The Petition for Appeal and Application for Stay of Execution is from the final order of the Circuit Court of Raleigh County, West Virginia, Special Judge, Frank E. Jolliffe presiding, entered December 17, 1996. The parties have entered into an Agreed Order staying execution of judgment until final disposition by this Court. The Petition for Appeal was timely filed on February 7, 1997.

The refusal to hear this case would be a gross miscarriage of justice and result in substantial inequities and irreparable harm to the petitioner.

Part of the charge of this Court on remand to the Circuit Court in determining the validity of an oral separation agreement was to ascertain whether the parties understood its terms, voluntarily agreed to the same without any coercion, and whether the terms of the oral separation agreement are fair and equitable. To refuse to hear this Petition for Appeal would render meaningless the charge of this Court to the Circuit Court considering the gross inequities, lack of financial disclosure, misrepresentation as to income earned and applied to the child support formula and the denial of the Petitioner to free access of the Courts when her ability to pursue child support arrearages were suspended by the Circuit Court's orders "holding in abeyance" and staying further determination and collection of child support arrearages from May 20, 1994 through December 17, 1996.

Further, the petitioner is in jeopardy of losing the marital home, as a result of the "agreement's" buy-out provisions, while a child in her custody, still under the age of 18 years resides with her, as a result of the Circuit Court's acceptance of a valuation of the marital home, clearly agreed by the parties from uncontroverted evidence, on remand from this Court, to have been Twenty-Five Thousand Dollars ($25,000.00) less than stated by the parties at the time the so-called original "oral agreement" was made, and which resulted in Petitioner's waiver of alimony. This, and the gross, gross inequity in the division of marital property pursuant to the so-called "oral agreement" is clearly wrong and an abuse of discretion.

There is no excuse for the manner in which Petitioner has been denied full and complete access to the Courts of this state, and due process. The final decision of Judge Jolliffe was an attempt to "sweep under the carpet" the failure of the judicial system to actually conduct a full inquiry into the fairness and equitableness of the so-called "agreement" division of assets, waiver of alimony, and treatment as to both amount and arrearages of child support. Consider the disbarment of one Law Master, another Law Master's improper allowing of "**pro tanto**" credits against child support in contravention of the Melson formula without a petition for modification being filed, and holding the correct calculation and collection of arrearages until the entry of the final appealable order on December 17, 1996. By the Law Master at a hearing to determine child support arrearages, properly noticed, and without a petition for modification being filed.

The upholding of the so-called "oral agreement," allowing the waiver of alimony to stand notwithstanding the under-evaluation of the marital home (which was the consideration for waiver of alimony), together with the improper calculation of child support when respondent misrepresented his income as shown by an exhibit being a wage slip issued to him six (6) days prior to the final hearing (discovered and documented upon remand by this Court to be $39,230.90 through 27 weeks, as opposed to $30,000.00 over 26 weeks, or $60,000.00 annually, as he represented - a copy is attached to this Motion), is inexcusable. See Attachment 3 to Respondent's Answer to Petition and Supplemental Memorandum of Defendant filed with the Circuit Court with cover letter of July 14, 1995, identified in the record by plaintiff as D 11, being index document 66. See also Attachments 8 and 9 from plaintiff's document D 12, index document 67. In his Memorandum in Opposition filed with this Court, Respondent confirms he never filed with the Court a copy of his tax return for 1988, and objected in the court below because "Chief Justice Miller did not require it," in the Court's prior opinion, Gangopadhyay v. Gangopadhyay, 184 W.Va. 695, 403 S.E. 2d 712 (1991). Further, in the Memorandum in Opposition filed with this Court, the Respondent does not deny that he did not provide information concerning his 1988 income as requested by Petitioner's previous counsel (now Judge Kirkpatrick). Respondent's financial disclosures filed prior to the final hearing were false. There was a material concealment and misrepresentation by the Respondent as to his income, certainly relevant - substantially so - on questions regarding child support, waiver of alimony, and whether there was an informed, voluntary agreement to begin with.

To allow the Circuit Court's decision to stand will be far more unjust, unfair and inequitable than the "patently unfair" finding of this Court in Summers v. Summers, _____ W.Va. ____, 465 S.E.2d 224 (1995), where the Court held a separation agreement to be unenforceable even though this Court did not substitute its judgment for a finding that the separation agreement was not involuntary or "inequitable on its face." In this case the substantial disparity in income and division of assets, misrepresentation as to income prior to the final hearing and refusal to account for all assets after remand by this Court are substantially more egregious and "patently unfair," than in Summers, supra.

Petitioner believes that this Court should be, and is interested in addressing unfairness and inequity, and not simply in writing opinions to clarify the law. What this Court did in Summers, this Court must not refuse to do in this case where substantially greater stakes are involved including the potential loss of the marital dwelling wherein Petitioner and a minor child reside, and considering that the Respondent has the substantial financial wherewithal to actually redress these inequities, some of which he has continued to refuse to disclose.

In support of this motion, Petitioner submits a renewed petition for appeal and application for stay of execution pending appeal, and disposition on appeal, a copy of which is attached hereto and incorporated herein by reference.

PRAYER

Petitioner prays that this Court grant her motion to Renew her Petition for Appeal and Application for Stay of Execution Pending Appeal, and Disposition on Appeal; that her Petition for Appeal and Review, as well as for a stay of execution pending disposition on appeal, without the requirement of bond, be granted (there is an agreed stay order in effect until final disposition by this Court); that the so-called "oral agreement" of the parties be held to be involuntarily entered into while under duress, or, in the alternative, that the same be declared to be unenforceable as being patently unfair considering the respective financial positions of the parties, defendant's misrepresentation as to income prior to entering into the so-called "oral agreement," the waiver of alimony, gross under-evaluation of the property with a buy-out provision in consideration for waiver of alimony, and all other reasons stated herein and in the Renewed Petition for Appeal, etc.; that upon granting the Petition for Appeal that the Court direct the Circuit Court to require the Respondent to submit full and appropriate evidence of his income and property and to equitably divide the assets of the parties and correct the injustices as to miscalculation of child support and previous stays of execution in regard to child support; that she may be awarded her costs and attorney's fees; and for such other and further relief as to the Court is just, fair and equitable.

Respectfully submitted,
IRA GANGOPADHYAY
By Counsel

"S/Charles A. Riffee, II, Esquire"
Charles A. Riffee, II, Esquire
CALDWELL, CANNON-RYAN & RIFFEE
P. O. Box 4347
Charleston, West Virginia 25364

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 11th day of December, 1997, the following order was made and entered:

Ira Gangopadhyay, Plaintiff
Below, Petitioner

vs.

Nirmal Gangopadhyay, Defendant
Below, Respondent

On a former day, to-wit, December 8, 1997, came the petitioner, Ira Gangopadhyay, by Caldwell, Cannon-Ryan & Riffee, and Charles A. Riffee, II, her attorneys, and presented to the Court her motion in writing for leave to file a petition for appeal in the above-captioned proceeding out-of-time for the reasons stated therein, which being seen and inspected by the Court is hereby refused.

A True Copy

Attest: "S/Rodney Teal"
Clerk, Supreme Court of Appeals

APPENDIX: H